Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2021

Public Authority: Rotherham, Doncaster and South Humber NHS Foundation Trust

Address: Trust Headquarters
Woodfield House
Tickhill Road Site
Weston Road
Balby
Doncaster
DN4 8QN

Decision (including any steps ordered)

1. The complainant submitted to Rotherham, Doncaster and South Humber NHS Foundation Trust (the Trust) a 110 part request for information relating to electroconvulsive therapy (ECT), serious incidents, restraints, seclusion and medication errors. The Trust refused to comply with the requests as it said it would exceed the cost limit under section 12(1) of FOIA to do so.

2. The Commissioner's decision is that the Trust was correct to apply section 12(1) of FOIA and that it was not therefore obliged to comply with the requests. The Commissioner also considers that the Trust provided the complainant with advice and assistance in accordance with its obligations under section 16 of FOIA. However, in issuing its refusal notice outside the statutory time limit, the Trust breached section 17(5) of FOIA.

3. The Commissioner does not require the Trust to take any step as a result of this decision notice.

Request and response

4. On 17 April 2020, the complainant wrote to the Trust to submit a 110 part request for information relating to electroconvulsive therapy (ECT), serious incidents, restraints, seclusion and medication errors.[1]

5. The Trust responded on 7 August 2020. It refused to comply with the information request citing section 12(1) of FOIA as its basis for this refusal because it considered that complying with this request would exceed the appropriate cost and time limits.

6. Remaining dissatisfied with the response received, on 8 August 2020 the complainant wrote to the Trust to request an internal review.

7. On 8 September 2020, the Trust provided the complainant with the outcome of its internal review. The Trust upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 10 September 2020 to complain about the way her request for information had been handled.

9. The scope of this case and the following analysis is to consider whether the Trust was correct to apply section 12(1) of FOIA to the request in this case and whether it complied with its obligations under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:

    - either comply with the request in its entirety, or

[1] The wording of this request has been reproduced and attached to this decision notice – see Annex 1

- confirm or deny whether the requested information is held.

11. In this case the Trust relied on section 12(1), meaning that it estimated that it would exceed the cost limit to comply with the request in its entirety.

12. The estimate must be reasonable in the circumstances of the case. The appropriate limit is £600 for central government departments and £450 for all other public authorities. The cost of complying with a request should be calculated at the rate of £25 per hour - 24 hours work for central government departments; 18 hours work for all other public authorities. In forming a cost estimate a public authority can take into account the time taken to:

    (a) determine whether it holds the information

    (b) locate the information, or a document which may contain the information

    (c) retrieve the information, or a document which may contain the information, and

    (d) extract the information from a document containing it.

13. The appropriate limit for the Trust is £450 or the equivalent of 18 hours work.

14. The Commissioner notes that the Trust in relation to the present request explained to the complainant that, due to the wide scope of her request, complying with her request would exceed the cost limit.

15. The Trust stated:

    "We have calculated the response to your request would cost more than the £450 limit undertaking a calculation of £25 per hour as allowed, multiplied by the number of hours required to identify and collate the information requested in your original request for information. We therefore refused the request under Section 12 of the FOIA."

16. The Commissioner asked the Trust to provide her with a detailed estimate of the time it would take to comply with the requests and the costs that would be incurred as a result of this process.

17. The Trust provided the Commissioner with a table that identifies which of the Trust's departments would be involved in order to comply with each part of the request. The Trust explained that for each set of questions its information governance team would have to coordinate with its: Performance Department, Informatics Department, Service

Department, Investigations Department, Complaints Department, Serious Incidents Department, Coroner's Department and Claims Department.

18. The Trust explained that its information governance team took one hour, for each set of questions, to coordinate with all relevant departments to establish which of them would hold information within the scope of the request. This process took five hours to complete.

19. In addition the Trust estimated that it would take one hour to address each of the five sets of questions with each of the eight identified departments to establish the amount of information held and to retrieve it. This process would take 40 hours in total. The Trust explained that this estimate did not include the extraction of the information, because it would only be possible to calculate that once it had retrieved the information held.

20. Further, the Trust stated that it would be necessary for its information governance team to spend four hours per each set of requests in order to conduct *"Interrogation of Medical Records and locating relevant medical records, including audit of patients and retrieval of records across Clinical system department, Records Archive etc."* This process would take an additional 20 hours to complete.

21. Following the above estimate, the Trust concluded that it would take 65 hours (13 hours for each five sets of 22 questions) only to establish the amount of information held and to retrieve it.

22. The Trust also confirmed that the estimate is based on the quickest method of retrieval.

23. On the basis of this explanation from the Trust, the Commissioner accepts that the estimate of the time necessary to comply with the request is reasonable. The Commissioner also notes that the request is extremely lengthy and from reading it, it appears likely that compliance with it would exceed the cost limit.

24. Based upon the Trust's submissions, the Commissioner accepts that the Trust's cost estimate was reasonable and therefore section 12(1) was correctly engaged in relation to the complainant's request. Therefore, the Commissioner concludes that the Trust correctly applied section 12(1) of FOIA in this case.

Section 16 – Advice and Assistance

25. Under section 16(1) of FOIA the Trust is obliged to provide the complainant with advice and assistance to help enable the complainant

to refine the request to fall within the cost limit or explain why this would not be possible.

26. The Commissioner notes that the Trust on both occasions, in its initial response and the outcome of the internal review, stated that it would "*consider the release of some information within the cost and time limit*" if the complainant would reduce the scope of her request.

27. As the Trust has provided advice and assistance in this case, by offering to reconsider the complainant's request if the complainant would reduce the scope of the request, it has complied with its obligations under section 16(1) of FOIA.

Section 17 – refusal of request

28. Section 1(1) of FOIA states that:

> *"Any person making a request for information to a public authority is entitled –*
>
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
>
> *(b) if that is the case, to have that information communicated to him."*

29. Section 17(5) of FOIA states that a public authority which in relation to any request for information is relying on a claim that section 12 or 14 applies must *"within the time for complying with section 1(1), give the applicant a notice stating that fact."*

30. The Commissioner's guidance on application of section 17 of FOIA states that *"a public authority must issue its refusal notice as soon as practicable and within the time limit provided at section 10 of the Act. The time limit for most public authorities is 20 working days after the date they receive a request…"*

31. The Trust received the complainant's information request on 17 April 2020. The Trust sent its refusal notice to the complainant on 7 August 2020. On this occasion, the Trust was well beyond the time limit for issuing a refusal notice and therefore breached section 17(5).

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals,
    PO Box 9300,
    LEICESTER,
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

The formulation of the information request submitted by the complainant on 19 March 2020 was as follows:

"Please provide ECT information under the FOI act to the following questions:

1. *Please supply patient's information ECT leaflet.*
2. *Please supply patient ECT consent form.*
3. *Please supply any ECT reports/investigations*
4. *How many ECT in 2019?*
5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *What proportion of patients were classified BAME?*
9. *How many were receiving ECT for the first time?*
10. *How many patients consented to ECT?*
11. *How many ECT complaints were investigated outside the NHS and CCG?*
12. *How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?*
13. *How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?*
14. *How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?*
15. *How many patients have suffered complications during and after ECT and what were those complications?*
16. *Have there been any formal complaints from patients/relatives about ECT?*
17. *If so, what was their concerns?*
18. *How many patients report memory loss/loss of cognitive function?*
19. *What tests are used to assess memory loss/loss of cognitive function?*
20. *Have MRI or CT scans been used before and after ECT?*
21. *If so what was the conclusion?*
22. *How does the Trust plan to prevent ECT in the future?*

Please provide SERIOUS INCIDENT information under the FOI act to the following questions:

1. *Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.*
2. *Please supply patient SERIOUS INCIDENT REPORTS consent form.*

3. *Please supply any serious incident reports/investigations*
4. *How many SERIOUS INCIDENT REPORTS in 2019?*
5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *What proportion of patients were classified BAME?*
9. *How many were receiving SERIOUS INCIDENT REPORTS for the first time?*
10. *How many patients consented to SERIOUS INCIDENT REPORTS?*
11. *How many SERIUOS INCIDENT REPORTS were investigated outside the NHS and CCG?*
12. *How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
13. *How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
14. *How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)? #*
15. *How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?*
16. *Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?*
17. *If so, what was their concerns?*
18. *How many patients report memory loss/loss of cognitive function?*
19. *What tests are used to assess memory loss/loss of cognitive function?*
20. *Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?*
21. *If so what was the conclusion?*
22. *How does the Trust plan to prevent SERIOUS INCIDENTS in the future?*

Please provide restraints information under the FOI act to the following questions:

1. *Please supply RESTRAINTS patient's information leaflet.*
2. *Please supply patient RESTRAINTS consent form.*
3. *Please supply any Restraints/investigations*
4. *How many RESTRAINTS in 2019?*
5. *What proportion of patients were men/women?*
6. *How old were they?*

7. *What were the diagnoses and in what proportions?*
8. *What proportion of patients were classified BAME?*
9. *How many were receiving RESTRAINTS for the first time?*
10. *How many patients consented to RESTRAINTS?*
11. *How many RESTRAINTS were investigated outside the NHS and CCG?*
12. *How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?*
13. *How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?*
14. *How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)?*
15. *How many patients have suffered complications during and after RESTRAINTS and what were those complications?*
16. *Have there been any formal complaints from patients/relatives about RESTRAINTS?*
17. *If so, what was their concerns?*
18. *How many patients report memory loss/loss of cognitive function?*
19. *What tests are used to assess memory loss/loss of cognitive function?*
20. *Have MRI or CT scans been used before and after RESTRAINTS?*
21. *If so what was the conclusion?*
22. *How does the Trust plan to reduce restraints in the future?*

Please provide SECLUSION information under the FOI act to the following questions:

1. *Please supply patient's information SECLUSION leaflet.*
2. *Please supply patient SECLUSION consent form.*
3. *Please supply any SECLUSION reports/investigations*
4. *How many SECLUSION in 2019?*
5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *What proportion of patients were classified BAME?*
9. *How many were receiving SECLUSION for the first time?*
10. *How many patients consented to SECLUSION?*
11. *How many SECLUSIONS were investigated outside the NHS and CCG?*

12. *How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?*
13. *How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?*
14. *How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?*
15. *How many patients have suffered complications during and after SECLUSION and what were those complications?*
16. *Have there been any formal complaints from patients/relatives about SECLUSION?*
17. *If so, what was their concerns?*
18. *How many patients report memory loss/loss of cognitive function?*
19. *What tests are used to assess memory loss/loss of cognitive function?*
20. *Have MRI or CT scans been used before and after SECLUSION?*
21. *If so what was the conclusion?*
22. *How does the Trust plan to prevent SECLUSION in the future?*

Please provide MEDICATION ERRORS information under the FOI act to the following questions:

1. *Please supply patient's information MEDICATION ERRORS leaflet.*
2. *Please supply patient MEDICATION ERRORS consent form.*
3. *Please supply any MEDICATION ERRORS reports/investigations*
4. *How many MEDICATION ERRORS in 2019?*
5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *What proportion of patients were classified BAME?*
9. *How many were receiving MEDICATION ERRORS for the first time?*
10. *How many patients consented to MEDICATION ERRORS?*
11. *How many MEDICATION ERRORS S were investigated outside the NHS and CCG?*
12. *How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?*
13. *How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?*

14. *How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?*
15. *How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?*
16. *Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?*
17. *If so, what was their concerns?*
18. *How many patients report memory loss/loss of cognitive function?*
19. *What tests are used to assess memory loss/loss of cognitive function?*
20. *Have MRI or CT scans been used before and after MEDICATION ERRORS?*
21. *If so what was the conclusion?*
22. *How does the Trust plan to prevent MEDICATION ERRORS in the future?*"