Reference: IC-62548-T7M7

Freedom of Information Act 2000 (FOIA)
Decision notice

Date: **25 February 2021**

Public Authority: **Hertfordshire Partnership University NHS Foundation Trust**

Address: **99 Waverley Rd,**
St Albans
AL3 5TQ

Decision (including any steps ordered)

1. The complainant has requested information relating to Electro Convulsive Therapy (ECT).

2. The Commissioner's decision is that Hertfordshire Partnership University NHS Foundation Trust (the Trust) has correctly cited section 12(1) – cost of compliance - in response to the request.

3. However, she also finds the Trust has breached section 10 (time for compliance) and section 16 (advice and assistance).

4. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

5. On 16 April 2020, the complainant wrote to the public authority and requested a variety of information relating to ECT, comprising of 110 questions. The full request is attached at the end of this decision notice.

6. The public authority responded on 5 June 2020 and advised that due to the Covid-19 pandemic it was not processing information requests. It advised that it would be dealt with as soon as possible. The Trust provided its substantive response on 8 September 2020.

7. It disclosed some of the requested information, however it considered that some of it was exempt as it was personal data of other individuals. It further stated that it would take 1,134.62 hours and amount to £28,365.82 to respond to the questions it was not able to answer[1].

8. Following an internal review the public authority wrote to the complainant on 1 October 2020 and maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 3 October 2020 to complain about the way her request for information had been handled. The Commissioner will first consider the application of section 12(1). In the event that this does not apply she will go one to consider section 40(2) with regard to the third party personal data.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Trust.

12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.

13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in

[1] Risk Management and Patient Safety (hpft.nhs.uk)

carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it; retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

14. In its response to the complainant the Trust provided a cost breakdown for providing the withheld information to each part of the request.

15. The Trust then went on to state that it would cost a total of £28,365.82 to provide the remaining information:

Part 1: ECT - In order to provide you with this information it would involve manually reviewing the 60 records. It is estimated that it would take 24 minutes (i.e. 2 minutes per question) to scrutinise each record i.e. 24 hours @ £25 = £600.00

Part 2: Serious Incident reporting - It is estimated that it would take 22 minutes (2 minutes per question) to scrutinise each record i.e. 44 hours @ £25 = £1,100.00

Part 3: Restraints - . In order to provide you with this information it would involve manually reviewing the 1,936 records. It is estimated that it would take 22 minutes (2 minutes per question) to scrutinise each record i.e. 709.86 hours @ £25 = £17,746.66.

Part 4: Seclusion - It is estimated that it would take 22 minutes (2 minutes per question) to scrutinise each record i.e. 130.16 hours @ £25 = £3,254.16.

Part 5: Medication errors - In order to provide you with this information, it would involve manually reviewing the 618 medication incidents. The Trust estimated that it would take 22 minutes (2 minutes per question) minutes to scrutinise each record i.e. 226.60 hours @ £25 = £5,665.00.

The Commissioner's view

16. The Commissioner has concluded that the Trust has provided sufficient evidence to support its view that the request exceeded the appropriate limit for compliance.

17. The way the information is held does not lend itself to a straight forward response that would fall within the fees limit. The estimated time taken to carry out the permitted activities far exceeds the 18 hours of staff

time that the fees regulations allow for. The Commissioner agrees that the Trust has correctly cited section 12(1) and has provided a detailed analysis of why complying with the request would not be possible.

18. Based upon the Trust's submissions, the Commissioner accepts that it would exceed the cost limit to comply with the requests and therefore section 12 was correctly engaged in this case.

Section 10 – time for compliance with request

19. Section 1(1) of the 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."

20. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.

21. The information request was made on 16 April 2020. The public authority did not advise of its position until 4 June 2020 and did not provide a substantive response until 8 September 2020.

22. Although the circumstances at the time inevitably led to a delay, the legislation does not provide for extra time to be taken. The Trust therefore breached section 10 FOIA.

Section 16 – Advice and Assistance

23. Under section 16 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.

24. From the information provided it appears that the Trust has not provided any advice and assistance to the complainant in this case.

25. However, given the nature of the request and that the Trust provided as much information as possible within the limit, it is difficult to see what further advice or assistance could be given. Nevertheless, the Commissioner would expect to see some reference to this in the Trust's response. Therefore she considers it has not complied with its obligations under section 16 FOIA.

Other matters

26. The Commissioner acknowledges the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

27. 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

28. 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.

29. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

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 incidents reports patient's information leaflet.

2. Please supply patient serious incidents reports consent form.

3. Please supply any serious incident reports/investigations

4. How many serious incidents 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 incidents reports for the first time?

10. How many patients consented to serious incidents reports?

11. How many serious incidents reports were investigated outside the NHS and CCG?

12. How many patients died during or soon after serious incidents reports and what was the cause (whether or not serious incidents reports was considered the cause)?

13. How many patients died a few months after serious incidents reports and what was the cause (whether or not serious incidents reports was considered the cause)?

14. How many patients died by suicide within a few months of receiving serious incidents reports (whether or not serious incidents reports was considered the cause)?

15. How many patients have suffered complications during and after serious incidents reports and what were those complications?

16. Have there been any formal complaints from patients/relatives about serious incidents 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 incidents 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 seclusion 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 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?