

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2021

Public Authority: NHS Herefordshire and Worcestershire Clinical Commissioning Group

Address: The Coach House
John Comyn Drive
Worcester
Worcestershire
WR3 7NS

Decision (including any steps ordered)

1. The complainant made a six-part request for information relating to NHS Herefordshire and Worcestershire Clinical Commissioning Group's (the CCG) procedures and policies of the Continuing Healthcare (CHC) programme.
2. The CCG provided the complainant with some information falling within the scope of her request. During the course of the Commissioner's investigation, the CCG provided the complainant with further information and explained that it does not hold other information falling within the scope of the request.
3. The Commissioner's decision is that the CCG has not complied with its obligations under section 1(1) and section 10(1) of the FOIA.
4. Since the request has now been responded to, the Commissioner does not require the CCG to take any steps as a result of this decision notice.

Request and response

5. On 9 August 2019, the complainant made the following request for information from the CCG:

"I formally request under the Freedom of Information Act 2000 information on:-

Continuing Health Care (CHC) Policies and Procedures for NHS Herefordshire Clinical Commissioning Group (CCG)

- a) *A copy of your policy regarding the equality act 2010*
 - b) *A copy of your policy with regard to The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012*
 - c) *A copy of the objective assessment test you must have to assess for continuing healthcare eligibility per S107 Grogan judgement Annex C National Framework and the Secretary of States Directive Dated 3/3/2016*
 - d) *A copy of your human rights act policy*
 - e) *A copy of your policies, procedures and guidelines with regard to CHC*
 - f) *A copy of your corporate governance policy with regard to CHC"*
6. The CCG responded on 27 August 2019. It provided the complainant with a copy of the CCG's Equal Opportunity Policy in response to part a) of the request. It provided the complainant with a link to the published policies on its website in response to parts b), c) and d), and in response to parts e) and f), the CCG stated that the information "*is currently in draft as not approved following transfer of service provider.*"
 7. The complainant requested an internal review on 3 September 2019, stating that the CCG's response did not answer the questions and did not detail the specifics needed. The complainant also asked the CCG to answer the points she had raised for each question to clarify its position.
 8. The CCG sent the complainant the outcome of its internal review on 12 November 2019. The CCG stated that it had no further information to add to part a) of the request. It provided the link it originally provided to the complainant in response to part b) of the request. The CCG provided further links to information on its website in response to parts c), e) and f) of the request. In response to part d) of the request, the CCG advised that it did not have a specific Human Rights Act policy.
 9. The complainant requested a further internal review on 10 March 2020, stating that parts a), b), c) and f) had not been fully answered.
 10. The CCG sent the complainant the outcome of its second internal review of this request on 9 April 2020, in which it did not address whether there was any further information held.

Scope of the case

11. The complainant contacted the Commissioner on 15 February 2020 to complain about the way her request for information had been handled. In particular, the complainant was concerned that the CCG had still not fully answered parts b), c) and f) of the request in her view.
12. In line with her usual practice, the Commissioner wrote to the CCG on 16 November 2020 asking it to revisit the request. In particular, the Commissioner asked the CCG:
 - whether it had provided the complainant with the specific link to the information requested in part b) of the request.
 - whether it had provided, or was in a position to provide, the complainant with the information requested in part f) of the request.
 - to provide the complainant with a response to part f) of the request that complied with the FOIA if it had not already done so or was not in a position to do so.
13. On 14 December 2020, the CCG wrote to the complainant and provided a copy of the CCG's Constitution in response to part b) of the request. It provided further details in relation to part c) of the request. It also provided the complainant with a copy of Midlands and Lancashire Commissioning Support Unit's CHC Operational Policy and provided further details in respect of CHC assessments.
14. The complainant wrote to the CCG on 4 January 2021 reiterating that in part b) she had requested a copy of the Corporate Governance policy with regard to CHC. She asked the CCG to state whether or not a policy existed at the time of the request.
15. The CCG responded to the complainant on 20 January 2021 confirming that it did not hold a policy entitled Corporate Governance Policy regarding CHC. It provided further details of the procedure it follows and provided website links to some relevant policies.
16. The Commissioner wrote to the complainant on 26 January 2021 and 15 February 2021, advising that there did not appear to be any further matters to investigate and asked whether she was prepared for the matter to be closed or wished to proceed to a decision notice.
17. The complainant responded on 16 February 2021, asking about the implications of a decision notice. The complainant accepted that the CCG

seemed to have answered her questions but was concerned about the time and effort it took for her request to reach a conclusion.

18. The Commissioner wrote to the complainant on 17 February 2021 explaining her role and the implications of a decision notice.
19. The complainant responded to the Commissioner on 28 February 2021, asking her to prepare a decision notice for this case.
20. The Commissioner therefore considers that the scope of this case is to determine whether the CCG has complied with its obligations under section 1(1) and section 10(1) of the FOIA.

Reasons for decision

21. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
22. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and by no later than the twentieth working day following the date of receipt.
23. In the circumstances of this case, the total time taken by the CCG to confirm what information it held falling within the scope of the request and provide the complainant with all of that information exceeded 20 working days. The Commissioner therefore considers the CCG to have breached section 1(1) and section 10(1) of the FOIA in this case.

Right of appeal

24. 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

25. 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.
26. 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

Pamela Clements
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