

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 nine-part request to NHS Herefordshire and Worcestershire Clinical Commissioning Group (the CCG) for information relating to its health care system.
2. The CCG provided the complainant with some information in response to 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 5 September 2019, the complainant made the following request for information from the CCG:

"Please provide answers to the following. For context I have attached the email from [name 1 redacted] which contains the statements leading to my questions.

- a) *Why Herefordshire is so different to most CCGs in the country in its offering of health and care system, as suggested by [name 1 redacted] in his email or the 16th August 2019 as attached*
 - b) *Details of the primary and community care provision which Herefordshire is offering, as mentioned by [name 1 redacted] in his email of 16th August 2019 as attached*
 - c) *Information regarding the external peer reviews of Herefordshire CCG CHC, as mentioned by [name 1 redacted] in his email of 16th August 2019 as attached, including dates of when reviews have taken place for 2018 and 2019 with URLs to the report written as a result*
 - d) *Information regarding external scrutiny process*
 - e) *the CCG's view on the lack of knowledge demonstrated of benchmark cases upon which the National Framework is based. (It was confirmed by [name 2 redacted] in a pre-appeal meeting 19th July 2019, that staff didn't know the details of cases such as [names 3 and 4 redacted]).*
 - f) *Why statistically, the chances of being awarded CHC funding are so much lower in Herefordshire and why that eligibility figure is so low - based on Snapshot data figures available at:
<https://www.england.nhs.uk/statistical-work-areas/nhs-chc-fnc/>*
 - g) *Why in June 2018 CHC nurses reported to have been applying the National Framework guidance more rigorously than before in Herefordshire, as confirmed in the June 2018 report by [name 5 redacted] Page 25, since when eligibility rates continue to be low. Report available Appendix 1 at:
<http://councillors.herefordshire.gov.uk/ieIssueDetails.aspx?Ild=50026554&PlanId=0&Opt=3#AI50321>*
 - h) *What local policy changes were made prior to June 2018 that led to CHC nurses applying the National Framework guidance more rigorously than before?*
 - i) *What policy changes have taken place to correct the rigorous application of the National Framework since June 2018?"*
6. The CCG responded to this request on 12 November 2019, providing the complainant with some information in response to the request.
 7. The complainant requested an internal review of this response on 10 March 2020, stating that parts c) and d) of the request had not been answered.

8. The CCG sent the complainant the outcome of its internal review on 9 April 2020, in which it did not appear to address whether there was any further information held.

Scope of the case

9. 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 not fully answered parts c) and d) of her request for information.
10. 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 to confirm whether it held any further information in relation to parts c) and d) of the request.
11. On 14 December 2020, the CCG wrote to the complainant and provided further information in relation to part c) of the request. The CCG went on to confirm that it also held more information relating to the number of patients assessed for CHC in 2018 and 2019 but indicated that providing this information would require over 144 hours of staff time to complete. The Commissioner assumes from this statement that the CCG was relying on section 12 of the FOIA to withhold this information (although the CCG did not explicitly refer to section 12 in its response). Section 12 provides that a public authority does not have to comply with the general right of access under section 1(1) if doing so would exceed the appropriate cost limit.
12. The CCG provided the complainant with information relating to a June 2018 independent review into CHC across Herefordshire, and a November 2018 "deep dive audit" by NHS England. However the CCG advised that the report itself was held by NHS England. It advised the complainant that CHC was also taken through the local Scrutiny Committee in 2018 and 2020 and provided the complainant with a link to the minutes of those meetings.
13. The Commissioner wrote to the complainant on 18 December 2020, asking whether she was content with the steps now taken by the CCG.
14. On 4 January 2021 the complainant responded to the Commissioner (copying in the CCG), raising concerns about the accuracy of the information provided by the CCG in relation to when the deep dive audit took place. In particular, she stated that she had been informed previously that the deep dive audit took place in October 2018, not November 2018, and therefore asked for confirmation of which date was correct. The complainant asked the CCG to confirm whether it had

received the report from NHS England and, if so, to provide a copy of this report.

15. The CCG responded to the complainant on 20 January 2021, confirming that the requested report is not held by the CCG.
16. The Commissioner wrote to the complainant on 26 January 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).

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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Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF