

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2021

Public Authority: Northern Lincolnshire and Goole NHS
Foundation Trust

Address: West Arches
Diana Princess of Wales Hospital
Scartho Road
Grimsby
DN33 2BA

Complainant:

Address:

Decision (including any steps ordered)

1. The complainant has requested information relating to the total number of covid-19 deaths in the North Lincolnshire area. The complainant specifically requested (a) the total number of covid-19 deaths where the deceased had no underlying health condition and (b) the total number of covid-19 deaths where covid-19 was the only cause of death.
2. Northern Lincolnshire and Goole NHS Foundation Trust (the Trust) was able to provide information in response to part (a) but determined that providing information in response to part (b) would exceed the cost limit outlined in section 12(1)(Cost of compliance exceeds the appropriate limit) of the FOIA.
3. The Commissioner's decision is that the Trust is entitled to rely on section 12(1) of the FOIA.
4. However, she also finds that the advice and assistance offered to the complainant is insufficient for the Trust to have fully complied with its obligations according to section 16 (Duty to provide advice and assistance) of the FOIA.
5. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the legislation.

- In line with its obligations according to section 16 of the FOIA, the Trust shall provide advice and assistance to the requestor in relation to their request.
6. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

7. On 15 December 2020, the complainant wrote to the Trust and requested information in the following terms:
- '...the total number of Covid 19 deaths in the north Lincolnshire trust where the deceased person had NO underlying health condition? Also a total number of deaths in north Lincolnshire from Covid 19 as the only cause of the death.'*
8. The Trust responded on 13 January 2021. It stated that to provide the requested information would exceed the cost limit outlined in section 12(1) of the FOIA.
9. Following an internal review the Trust wrote to the complainant on 28 January 2021. It maintained its original position.

Scope of the case

10. The complainant contacted the Commissioner on 28 January 2021 to complain about the way their request for information had been handled. The complainant noted that information had been disclosed in response to the same request submitted to other NHS Trusts. The complainant further noted that the total number of covid-19 deaths for these public authorities was higher than that of North Lincolnshire according to NHS England (NHSE) figures.
11. On 16 February 2021 the Trust issued an updated response to the complainant. It stated that, due to the high volume of requests it had received for similar, or the same, information, it had approached NHSE and requested a breakdown of the figure of covid-19 associated deaths for the area.
12. The data provided by NHSE showed that 410 patients had died in the Trust's hospitals and had tested positive for covid-19 within the 28 days

before their death. Of those patients 403 had an underlying health condition. This information allowed the Trust to provide a response to part (a) of the complainant's request: seven patients died in the Trust's hospitals, had tested positive for covid-19 within the 28 days before their death and had no underlying health conditions. The Trust clarified that this information was not held by the Trust itself at the time that the complainant originally made their request.

13. In the Trust's updated response, it maintained that to provide the requested information in response to part (b) of the request would exceed the cost limit as outlined in section 12(1) of the FOIA.
14. On 9 March 2021 the Commissioner outlined the scope of her investigation to both parties and asked the trust to revisit the way in which it had handled part (b) of this request.
15. The trust provided the Commissioner with its submission on 26 March 2021.
16. The Commissioner therefore considers the scope of her investigation to be to determine whether the Trust has correctly refused to provide the information at part (b) of the request as to do so would exceed the appropriate cost limit as set out in section 12(1) of the FOIA.

Reasons for decision

Section 12 – cost of compliance

17. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the costs of complying with the request would exceed the appropriate limit – 18 hours for a public authority such as the Trust.
18. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
 - (a) 'determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.'

19. The Trust felt it was important to distinguish between the information disclosed in response to part (a) of the complainant's request, the total number of covid-19 deaths where the deceased had no underlying health condition and part (b) the total number of covid-19 deaths where covid-19 was the only cause of death. The Trust also explained to the Commissioner how each dataset is recorded.
20. When a patient dies in hospital a Medical Certificate of the Cause of Death (MCCD) is completed. This is a hard copy certificate which records the cause of death as determined by a doctor.
21. During the pandemic NHS Trusts in England must also provide daily reports via a system administered by NHSE. Each Trust must report each instance in which a patient dies in hospital and has also tested positive for covid-19 within the 28 days before their death. As part of this reporting process the Trust also confirms if the patient had an underlying health condition which is based upon the national definitions. There is no requirement for covid-19, or any underlying health condition, to have directly caused or contributed to the patient's death; only that the patient has died in hospital and was included as part of the daily report in question. This is the information, collated by each devolved healthcare body, which has been reported daily by the government during the pandemic.
22. This NHSE system is reported into by multiple staff from different locations throughout the Trust. The Trust has no access to the collated data for North Lincolnshire as this is held on NHSE's system. However NHSE is able to provide specific information back to the Trust upon request and from this data, the Trust determined its response to part (a) of the request as outlined within paragraph 12.
23. The actual cause of death of a patient is recorded on the MCCD referred to in paragraph 19. This MCCD is retained by the Trust. The government has published 'Guidance for doctors completing Medical Certificates of Cause of Death in England and Wales' which includes details on how to record covid-19 as the sole cause of death.¹
24. Once a MCCD has been completed, one of the Trust's two bereavement offices then scans and provides a copy of the full certificate to the registrar of births, deaths and marriages. The registrar is part of the

¹ [guidance-for-doctors-completing-medical-certificates-of-cause-of-death-covid-19.pdf](https://www.publishing.service.gov.uk/guidance/guidance-for-doctors-completing-medical-certificates-of-cause-of-death-covid-19.pdf)
([publishing.service.gov.uk](https://www.publishing.service.gov.uk))

wider local authority and not the Trust itself. There has previously been no need for the Trust to perform searches for information contained within the electronic copies of the full MCCDs and therefore this information is not named or stored in a consistent way or in an electronic filing system.

25. With the above in mind, the Trust argues it would be extremely difficult for it to perform electronic searches in an attempt to locate the 410 patients referred to in paragraph 12 to ascertain whether covid-19 was the sole cause of death. The only way the Trust states it could obtain this information is through manual searches.
26. Once a copy of the full MCCD has been provided to the registrar, this leaves the Trust with a 'stub' of the MCCD which is designed to replicate the information contained within the completed certificate. These stubs are held by the Trust within manual death certificate books. At the beginning of the pandemic there were multiple death certificate books in circulation across wards and mortuaries across the trust's three hospitals: The Diana Princess of Wales Hospital, Goole and District Hospital and Scunthorpe General Hospital. In Summer 2020 MCCD completion was centralised to the mortuaries which means currently there are less death certificate books in circulation across the trust.
27. The Trust has informed the Commissioner there is no way to cross reference each death certificate book with the electronic data provided by NHSE and referred to within paragraph 12.
28. The Trust has also clarified that there is no guarantee that the stubs held in these death certificate books will replicate the information contained within the completed MCCD; the stubs may be completed in shorthand or abbreviations. The Trust has also explained that the team completing the review of these stubs would be administrative staff rather than medical staff. Therefore deciphering any shorthand or abbreviations may take longer.
29. The Commissioner, in order to determine that complying with the request in question would exceed the appropriate limit, asked the Trust to provide details of any sampling exercise that it had undertaken. The Trust's exercise was based on a response given to a previous request for information. The request was for the total number of deaths, where covid-19 was the only cause of death, just for the month of December 2020.
30. The Trust confirmed that it undertook relevant searches to comply with the aforementioned request. The Trust began by manually checking the MCCD's of 124 patients, all of whom died at the Diana Princess of Wales Hospital during December 2020. It took the Trust three hours and

fifteen minutes to perform this task and, based on this sample, the trust estimates it would take a minimum of one hour to check the MCCD's of 40 patients.

31. The Trust has further explained that it believes this to be a truly minimal figure as MCCD completion is centralised within the Diana Princess of Wales Hospital. Therefore, there were no individual ward-based death certificate books to study.
32. The Trust has explained that there has been a total of 1,758 patients who died in its hospitals in the full year between 1 March 2020 (if this date is taken as the start date of the pandemic) and 28 February 2021.
33. The Commissioner has calculated therefore that there would have been approximately 1465 deaths from the start of the pandemic to the approximate date that the complainant made their request. To study each MCCD at this rate would take approximately 36.625 hours to locate the 410 patients referred to within paragraph 12. This figure exceeds the limit referred to within section 12 of the FOIA – 18 hours.
34. The Trust has also confirmed that this sampling exercise has been based on the locating of the information, or a document containing the information and does not include retrieving or extracting the information. Once the stubs for the 410 patients in question were located, the detail recorded on each MCCD would need to be studied to determine whether covid-19 was the sole cause of death in accordance with the guidance referred to within paragraph 22.

The Commissioner's conclusion

35. Hypothetically, if the process became doubly efficient, it would take the Trust a minimum of one hour to check the MCCD's of 80 patients.
36. The Commissioner has calculated that to study each MCCD at this increased rate of efficiency would still take the trust approximately 18.32 hours, exceeding the limit referred to within section 12 of the FOIA – 18 hours.
37. The Trust has explained that examining each MCCD individually is the most efficient way of locating and retrieving the subsequent information, in line with the Trust's explanation contained within paragraph 24.
38. The Commissioner therefore accepts the Trust's explanation relating to the time it would take to locate each MCCD which identifies covid-19 as the sole cause of death for a patient. Having considered the Trust's submission, the Commissioner is of the opinion that the authority is entitled to rely on section 12(1) of the FOIA.

Section 16 – advice and assistance

39. When considering a request for information under the FOIA, a public authority has a duty to provide advice and assistance to the requestor:
- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
 - (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
40. Paragraph 2.10 of the section 45 Code of Practice states:
- 'Where it is estimated the cost of answering a request would exceed the 'cost limit' beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit.'
41. In addition, paragraph 6.9 states that 'public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit'.
42. In both the Trust's refusal notice of 13 January 2021 and its internal review outcome of 28 January 2021 the Trust failed to advise the complainant of how they may narrow the scope of their request to fall within the limit referred to within section 12(1) of the FOIA.
43. The Commissioner acknowledges that the Trust has liaised with NHSE in order to disclose information in relation to part (a) of this and similar information requests. The Trust, recognising the public interest in the information, has proactively sought to receive information it did not hold at the time of the request in order to provide advice and assistance to the complainant and other requestors.
44. However, the Trust did not engage with the complainant to determine whether it was possible to narrow the scope of the request. A similar request for information has already been dealt with as per the trust's sampling exercise outlined in paragraph 29 and the Commissioner therefore considers the Trust could have offered some meaningful advice and assistance to the complainant to assist in reframing the request to potentially bring it under the cost limit

45. The Commissioner therefore is not satisfied that the advice and assistance offered to the complainant is sufficient for the Trust to have fully complied with its statutory obligation under section 16 of the FOIA.

Other matters

46. As noted in paragraph 10, the complainant is concerned that the information requested in part (b) of their request has been disclosed in response to the same request for information submitted to other NHS trusts. Records management differs throughout authorities and the Commissioner cannot comment as to whether the information in question should be available for the Trust to provide within the cost limits. However, the Commissioner notes that according to paragraph 26, steps have been taken to improve the way MCCDs are processed within the trust.

Right of appeal

47. 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

48. 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.
49. 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

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