

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

Public Authority: University Hospitals of Derby and Burton NHS Foundation Trust

Address: Uttoxeter Road
Derby
DE22 3NE

Decision (including any steps ordered)

1. The complainant made a multi-part request to the Trust regarding documents supposed to be available to support the Trust's self-assessment of vascular services. The Trust answered all parts of the request but some confusion remained over whether the Trust had answered part 4 correctly and complied with its obligations under section 1(1) of the FOIA.
2. The Commissioner's decision is that the Trust has complied with its obligations under section 1(1) of the FOIA and that, on balance, it does not hold the requested information.

Request and response

3. On 4 August 2021, the complainant wrote to the Trust and requested information relating to the vascular services self-assessment completed by the Trust for 2019/2020; specifically in relation to the documents listed as evidence of positive response that the Trust later stated it did not hold. The request was in the following terms:

"1) Please can you list all of the indicators within the 2019/2020 self-assessment that this missing documentation affects.

- 2) Please can you give a breakdown of the missing documents for each of the indicators affected i.e. what documents did you not have at the time of the 2019/2020 submission?
 - 3) Given that your 2018/2019 assessment also declared that you had all of the documents in place and as its now over 3 years since that assessment, can you please list what documents that were missing as of question 2 are now in place (ready for the next assessment), again broken down by indicator please?
 - 4) Have you appointed a lead clinician/manager for the role that has the responsibility for ensuring and maintaining implementation of the standards set out in the vascular service specification and locally agreed policies/protocols. If so who is it?
 - 5) With regards to documents that are network wide as of the 2019/2020 self-assessment indicator descriptors, can you list which documents are currently at and are available for staff at the Chesterfield Royal Hospital NHS Foundation Trust.
 - 6) With regards to documents that are network wide as of the 2019/2020 self-assessment indicator descriptors, can you list which documents are not currently at and as such not available for staff at the Chesterfield Royal Hospital NHS Foundation Trust."
4. Following an internal review the Trust had answered all but one part of the request to the complainant's satisfaction. The outstanding part of the request was part 4.

Scope of the case

5. The Commissioner and complainant agreed the scope of the investigation would be to establish if the Trust has provided the information requested at part 4 ie has the Trust appointed a lead clinician to maintain implementation of the standards set in the vascular service specification and if so, who this person is.

Reasons for decision

6. Section 1(1) of the FOIA requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

7. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
8. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
9. In the refusal notice with regard to part 4 the Trust stated:

"This Trust are not in a formal network with Chesterfield and, therefore, do not have a lead clinician/manager in place. The arrangement with Chesterfield is collaboration whereby we provide medical staff to Chesterfield and vice versa. We also provide vascular surgery for Chesterfield patients at Royal Derby Hospital."
10. The complainant queried this response: they stated they had not asked about any network but in any event they considered the Trust was in a formal arrangement with Chesterfield Royal Hospital to provide vascular services in line with the service specification that uses the term network. They also stated they had a copy of a signed formal agreement which used the term 'Vascular Network'. As well as this the complainant also pointed to the following:

"You have also stated in question two that you now have the documentation in place for indicator 170004S-002, this indicator asks for the named vascular lead clinician and lead manager for the vascular network, the vary same term used within your signed SLA?"
11. Following the internal review the Trust responded as follows:

"The signed service agreement with Chesterfield hospital is not legally binding. The service lead as stated in the service agreement, for the service specification, is Mr Tim Rowlands."
12. The complainant did not consider this clearly answered part 4 of the request and asked:

"Can you please clarify that Mr Tim Rowlands is the person that is in charge/has the responsibility for ensuring and maintaining the standards as stated in the vascular service specification and as required/questioned within the self-assessment."
13. The reason for this clarification request was that in in April 2019 it was stated the Mr Rowland was in the role of Clinical Lead for Vascular

Services but in the declaration to NHS England the Trust stated he was not in this role as there was no network.

14. The complainant wanted confirmation from the Trust that Mr Rowlands was in the role as specified in the service specification and the self-assessment and that this was the same individual that was stated in April 2019.
15. The Trust responded to this request for confirmation by stating the Trust could not respond further under section 12 of the FOIA – that it would exceed the cost limit to respond any further given the time already spent responding to the request.
16. The Commissioner put the complainant's points to the Trust and also queried the application of section 12 at such a late stage and for, what appeared to be, very little additional work.
17. The Trust explained that whilst it is commissioned to deliver a vascular service by NHS England it is not in a vascular network; it works in partnership with Chesterfield Royal Hospital. The Trust stated that in relation to part 4 of the request it has not appointed a lead clinician for the role and that throughout the organisation it is the responsibility of the Business Unit triumvirate to ensure and maintain a safe and high-quality service. Mr Rowlands, it explained, was the Clinical Lead for Vascular Services and worked with the Business Unit triumvirate with service delivery but was not directly appointed lead clinician for the vascular partnership.
18. The Commissioner has considered both sides and the explanations given. In reaching a decision he has referred back to the wording of part 4 of the request:

“Have you appointed a lead clinician/manager for the role that has the responsibility for ensuring and maintaining implementation of the standards set out in the vascular service specification and locally agreed policies/protocols. If so who is it?”
19. The Trust has argued that the answer to this is, essentially, no. The responsibility for ensuring and maintaining the standards set out in the vascular services specification is not the role of one person and instead is the responsibility of the Business Unit triumvirate. Whilst Mr Rowlands has the title of Clinical Lead for Vascular Services he was not specially the lead clinician for the vascular partnership. As such the Trust argues it has now responded to this part of the request.
20. The Commissioner appreciates that, from the complainant's perspective, there was some confusion over the conflicting statements given by the Trust on this subject. In addition to this, the use of section 12 by the

Trust as a reason not to respond any further seems, to the Commissioner, to have been very misleading.

21. That being said, the Trust has now answered the question asked and confirmed it did not have a lead clinician employed with responsibility for maintaining the standards set out in the vascular services specification. As such the Commissioner is satisfied that the Trust has complied with section 1(1) of FOIA by confirming it holds no information in relation to part 4 of the request.

Right of appeal

22. 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

23. 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.
24. 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

Jill Hulley
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Information Commissioner's Office
Wycliffe House
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