

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: North Bristol NHS Trust
Address: Beaufort House
Beaufort Way
Southmead Hospital
Southmead
Bristol
BS10 5NB

Decision (including any steps ordered)

1. The complainant has requested information about same-sex wards. The above public authority ("the public authority") provided some information, but the complainant believes more is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has disclosed all the relevant information it holds. However, the public authority breached section 10 of FOIA as it failed to respond to the request within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 22 August 2022, the complainant wrote to the public authority and requested information in the following terms:

"Please therefore send a:

- [1] copy of your safeguarding policy.
- [2] if you have since done a safeguarding and risk assessment on the Privacy and Dignity/ Same sex ward policy please provide it. If not, please advise why not, and when it will be done.

- [3] any other guidance/ policies, whether formal or informal, to provide care for women who need same sex care or wards . This includes, but is not limited to:
- rape and sexual assault victims (who are usually women and girls) ,
 - domestic abuse victims (who are usually women and girls)
 - female religious believers
 - and other women (eg older women) who cannot share mixed sex spaces
 - those with learning disabilities and
 - disabled patients.

It will also include the Equality Impact Assessment, which you are required to do by Law, on how your policies affect these groups. If you do not have any additional policies/ guidance to ensure inclusion and reduce trauma for these vulnerable and often excluded groups, please advise.

- [4] The Trust does not currently record the biological sex of staff-only their self proclaimed gender on passports, which does not reflect biological sex. However as you are required to adhere to the Care Act, please therefore provide your guidance on how you manage conflicts between a male member of staff who identifies as female, and a female patient who needs same sex only intimate care. If you have no policy, and not considered the needs of female patients in this situation, please advise when policies/ guidance for these vulnerable women to access NHS care will be considered."

5. The public authority responded on 28 October 2022. It provided the recorded information it held within the scope of elements [1] and [4]. It noted that it had previously provided the information in the scope of element [3] and it stated that it did not hold any recorded information within the scope of element [2]. With the exception of correcting a broken link, the public authority upheld this position at internal review.

Scope of the case

6. The complainant set out her grounds of complaint on 24 November 2022 as follows:

"Trust have provided documents in response confirming that single sex wards are mixed sex (but called single sex in the policy) and through the EIA/ safeguarding policies provided, they do not consider this disadvantages any vulnerable groups. There are 3 aspects of their response I am raising concerns about. 1- Because

the Trust has a public sector equality duty to consider the needs of different people, I also asked for copies of guidance/ policies, whether formal or informal, on how they provide care for protected groups of people (eg women/ religious believers/ rape victims etc) who need same sex care or wards and cannot access NHS care if there aren't any- or that they state if they do not have any policies for these people. They have not provided this answer. 2- On 28.10.22, the Trust responded they had received so many FOIs about this issue in the past year from various people -persons unknown to me, and not published so no one outside the Trust knows what the FOIs were- that they would treat any FOI requests from anyone about same sex wards as vexatious under 14 and 36. 3- When I asked for an internal review of their decision, they still ignored my request for policies / guidance on how those who need single sex wards can access care at the hospital (or confirmation they don't have any) and said 23.11.22 they are 'issuing a refusal notice under Section 14 of the FOIA for any further requests on this topic from you'etc The fact the Trust says so many people are raising concerns about this same thing is surely a good reason to either publish the policies for those who need single sex wards, or state they don't have any policies for the inclusion of these people. No one (including myself) is asking this same thing to be vexatious. Clearly the Trust's refusal to address this issue is causing a lot of FOIs, distress and frustration to many people."

Reasons for decision

7. When a public authority receives a request under FOIA, its obligation under section 1(1) of FOIA is to provide the information that it holds in recorded form. It is not obliged to create or acquire information in order to satisfy a request.
8. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to judge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold.
9. It is evident, from both her requests for an internal review and her grounds of complaint to the Commissioner that the complainant does not consider that the policies the public authority holds provide sufficient protection for vulnerable groups nor that they meet the public sector equality duty. It is not for the Commissioner to judge whether or not that is the case (and it is important to note that the public authority

maintains that its policies comply with the law), only whether it provides a plausible rationale for believing that further information is held.

10. The Commissioner is satisfied that no further information is held. The public authority has explained that it has not carried out a safeguarding assessment because it is not required to do so. It has already provided a copy of its relevant policies and the associated Equalities Impact Assessments. The complainant may not consider these fit for purpose, but it is difficult to see what further information the public authority is likely to hold in recorded form.
11. On the balance of probabilities, the Commissioner is therefore satisfied that the public authority has complied with section 1(1) of FOIA.

Procedural matters

12. As the public authority failed to respond to the request within 20 working days it breached section 10 of FOIA.

Other matters

13. In its original refusal notice, the public authority noted that it was likely to refuse further information requests on this topic as it had "received requests at a rate of one a month for the past 12 months" and therefore either section 14 or 36 might be used in future.
14. It is not clear whether the previous requests being referred to were all submitted by the same person but, whilst he will of course assess any complaint on its own merit, the Commissioner considers it unlikely that submitting one request per month, over a twelve month period, will be sufficient, on its own, to engage section 14.
15. The Commissioner would also note that a public authority cannot engage section 36 on the grounds that the internal processes required to comply with a request would cause an unnecessary diversion of resources.

Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

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