

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2023

Public Authority: Avon and Wiltshire Mental Health Partnership
NHS Trust

Address: Bath NHS House
Newbridge Hill
Bath
Avon
BA1 3QE

Decision (including any steps ordered)

1. The complainant made a request for information regarding Avon and Wiltshire Mental Health Partnership NHS Trust's (the Trust) work on the SARI Supporting Trans People guidance. The Trust initially withheld some information under section 40(2) FOIA (third party personal data). However it subsequently confirmed that the Trust did not hold this information under section 1(1)(a) FOIA and directed the complainant to the public authority that would hold the required information.
2. The Commissioner considers that the Trust was correct to confirm that it does not hold the information it had originally withheld under section 40(2) FOIA in accordance with section 1(1)(a) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request on 29 November 2022:

"Pleas provide correspondence and meeting minutes regarding Avon and Wiltshire Mental Health Partnership's work on the SARI Supporting Trans People guidance. [part 1]

Please provide the Equality Impact Assessment carried out on the guidance. [part 2]

Please provide details of consultation with clinicians on the guidance.
[part 3]

Please provide any legal advice taken on the guidance. [part 4]"

5. On 1 December 2023 the Trust responded, it refused to provide the information in the first part of the request under section 40(2) FOIA. It said that the Equality Impact Assessment was carried out by the then Bristol, North Somerset and South Gloucestershire (BNSSG) Clinical Commissioning Group (CCG) now the BNSSG Integrated Care Board (ICB) and so this would need to be requested from the ICB. It provided information in response to part 3 and refused part 4 under section 42 FOIA (legal professional privilege).

6. On 1 December 2022 the complainant requested an internal review:

"I am aware that BNSSG CCG carried out an EIA, which concluded that the toolkit discriminated against several groups who have protected characteristics under the Equality Act 2010.

That is why I am requesting correspondence and meeting minutes. The public have a right to know how decisions are made that affect service users' care and may result in unlawful discrimination against them."

7. On 7 December 2023 the Trust responded. In relation to part 1 it explained that:

"AWP took part in this work, but the process and the meetings were run by BNSSG CCG (now ICB) with no formal minutes recorded. Please contact them with your request (bnssg.foi@nhs.net)."

It upheld its original responses to parts 2-4 of the request.

Scope of investigation

8. On 15 December 2022 the complainant contacted the Commissioner, in particular the complainant said:

"I would like to challenge the s40(2) refusal. I appreciate that the information cannot be disclosed if providing the requested source material would enable a reasonably determined person to identify the contributor. But, this is clearly where intelligent redaction would resolve the problem. Thus a consultee might say: "This is my personal

experience A,B,C and D so therefore I believe X,Y and Z" . In that case the Trust could simply redact and inform me that one consultee argued that X,Y and Z.

I think the Trust wish to hide the fact that they have not engaged with the Equality Impact Assessment carried out on the SARI Trans Toolkit in 2020 by BNSSG CCG which found that the toolkit was discriminatory."

9. As the Trust was no longer relying upon section 40(2) FOIA at the time of the internal review, in the first instance the Commissioner has considered whether the Trust was correct to confirm that it does not hold information falling within the scope of part 1 of the request under section 1(1)(a) FOIA.

Reasons for decision

10. Section 1(1) FOIA provides that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him."

11. In this case the Trust has explained to the Commissioner that the Trust does not hold the information requested, so it directed the requester to the BNSSG CCG (now ICB) through a link. Although it acknowledged that its first response relied upon an exemption, on review it determined that although the Trust took a small part in this work, the process and the meetings were run by BNSSG CCG (now ICB) with no formal minutes recorded. Therefore any information regarding the process will be held by BNSSG ICB and not the Trust.
12. Whilst the Trust has confirmed that it doesn't hold the requested information it has directed the complainant to make the request to BNSSG ICB.
13. On the balance of probabilities the Commissioner is satisfied that the requested information is not held by the Trust.
14. The Trust has therefore complied with its obligations under section 1(1)(a) FOIA in this case.

Other matters

15. In this case the Trust applied an exemption before determining whether the requested information was actually held. When processing FOIA requests it is fundamental that the Trust establishes what information it actually holds falling within the scope of a request before applying any Part II exemptions.

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: 0300 1234504

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.....

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