

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 December 2023

**Public Authority:** Cumbria, Northumberland, Tyne and Wear  
NHS Foundation Trust

**Address:** St Nicholas Hospital  
Jubilee Road  
Gosforth  
Newcastle upon Tyne  
NE3 3XT

### **Decision (including any steps ordered)**

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1. In relation to its gender identity service and adult patients, the complainant has asked Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust ('the Trust') how long someone might wait for a first appointment and for treatment to start if they were referred on the date of their request. The Trust's position is that it doesn't hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust doesn't hold the information requested in Q2 and Q3 of the complainant's request and has complied with section 1(1) of FOIA.
3. It's not necessary for the Trust to take any corrective steps.

### **Request and response**

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4. The complainant made the following information request to the Trust on 10 August 2023:

"The below questions pertain to gender identity services at your trust for adult patients.

1. How many patients are currently on your waiting list for gender identity care?
  2. If I were referred today (10/08/2023) how long would I wait to be seen for a first appointment? This figure should be given in months - for clarity we are referring to a first appointment with a psychiatrist or endocrinologist.
  3. If I were referred today (10/08/2023) how long would I typically wait for treatment to start? This figure should be given in months - for clarity we are referring to any form of treatment ranging from hormone therapy or surgery.
  4. On your current schedule of first appointments, what year and month were those patients referred to your service? For example, the current cohort of first appointment patient were referred in Oct 2018.
  5. How many staff currently work for you service? Please can this be broken down by discipline/job role. E.g. 2 x administration, 2 x endocrinologists, etc.
5. In its response of 16 August 2023, the Trust addressed questions 1, 4 and 5 and advised it didn't hold the information requested in questions 2 and 3.
  6. The complainant requested an internal review on 16 August 2023, pointing out that the Trust had previously provided this information to the BBC, via FOIA, in 2020 which indicated to the complainant that the Trust held the information. The complainant also said that whilst the Trust can never know what may happen in the coming years, based on its current model and waiting lists it will absolutely have a figure of what the current expected waiting times are. They argued that, based on the assumption that nothing changes in the Trust's operating model then a figure could and should be provided on the current basis.
  7. Finally, the complainant said that they had brought complaints about two other trusts to the Commissioner on this issue in the past, with those trusts also advising that it wasn't possible to provide predictive data about future waiting time. The complainant said that in both cases the Commissioner had found in their favour and the trusts were compelled to provide the information.
  8. In correspondence to the complainant on 17 August 2023, the Trust advised that the previous request it had dealt with was for slightly

different information. The Trust also advised that its current waiting times (ie for those that had already been waiting) were recorded and available on its website<sup>1</sup>. But the Trust confirmed that it wasn't able to predict waiting times and listed some of the factors why that was the case. Those factors included the number of people referred, the staff resources available, what needs people have once they're in the service (it has infrequent contact with some people, but other people need more) and the consequences of the COVID pandemic.

9. In correspondence to the Trust on 17 August 2023, for each of the factors that the Trust had given, the complainant gave a view on why that factor wouldn't mean that the Trust wouldn't hold the information they've requested.
10. On 15 September 2023, the Trust provided a formal internal review. It advised that around mid-August 2023 its Information Governance department was made aware that plans for a significant change to the gender identity service's operating model were being finalised and were due to be made public. The Trust said that on 23 August 2023 it had announced that the Northern Region Gender Dysphoria Service had agreed with NHS England to pause all new referrals to its service<sup>2</sup>. This would significantly impact assessment and waiting times. The Trust noted that the pausing of new referrals was "another (stark) example of the changeable nature of this service and served to further highlight the difficulties in predicting future waiting times..."
11. The Trust concluded its review by confirming that it doesn't hold the requested information and provided further reasoning and explanation as to why that's the case. The Trust also noted that FOIA doesn't oblige a public authority to speculate or make predictions in order to address a request for information.
12. Based on the Trust's submission to the Commissioner and the circumstances of the case the Commissioner advised the complainant on 20 November 2023 that, in his view, the Trust didn't hold the information in Q2 and Q3. The Commissioner invited the complainant to

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<sup>1</sup> <https://www.cntw.nhs.uk/services/northern-region-gender-dysphoria-service-specialist-service-walkergate-park/waiting-list-waiting-times/>

<sup>2</sup> <https://www.cntw.nhs.uk/services/northern-region-gender-dysphoria-service-specialist-service-walkergate-park/how-to-be-referred/>

withdraw their complaint, but they preferred to conclude the case through a formal decision.

13. In their correspondence to the Trust the complainant had indicated that other trusts had disclosed the information they've requested as a result of complaints to the Commissioner (paragraph 7). However, the Commissioner advised the complainant that the only two such complaints that he'd been able to identify had been closed informally and without any information having been disclosed.

### **Reasons for decision**

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14. This reasoning covers whether the Trust holds the information the complainant has requested in Q2 and Q3 of their request.
15. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to them if it's held and isn't exempt information.
16. The complainant doesn't accept that the Trust doesn't know how long someone who was referred to its gender service on 10 August 2023 might wait for an appointment (Q2) or might wait for treatment to start (Q3).
17. In initial communications with the Commissioner, they presented the following arguments to support their view that the Trust would hold that information, or sufficient information to enable it to provide an approximate figure:
  - Trusts/clinics in N Ireland, Wales, and Scotland (and one in England) have all provided the requested information or approximate figures.
  - Anecdotally each patient is given an approximate date of when they might be seen.
  - The Trust must know roughly where it is with how long a person referred in August (ie the time of the request) might wait for a first appointment, as a baseline. This is so that the Trust can measure how the waiting time length is going over time; whether waiting times are getting longer or shorter.

- The figure may be a very approximate figure, but the Trust should still provide the information as it could provide context/explanation along with the figure.

18. The Commissioner put those arguments to the Trust, and made the following points:

- If a public authority holds the 'building blocks' to enable it to derive the requested information, then it holds the information. If the Trust held such building blocks, that would mean that it could generate the requested figure, or an approximate waiting time, as it was at August 2023.
- Because one public authority holds information and is able to provide it, that doesn't necessarily mean another authority must also hold the same information. However, the Commissioner had noted that Trusts in the other nations (and one in England) had been able to provide the disputed information in this case so the Trust's submission must make clear why it couldn't provide it if that remained the case.

19. In its submission to the Commissioner, the Trust addressed the points above, as follows:

- The Trust doesn't know which public bodies dealt with other requests for the information that the complainant has referred to. However, the fact a public authority is an NHS body doesn't mean that it operates in the same way. NHS bodies are commissioned to provide different services, and even where those services are the same (such as in relation to gender identity), they're not delivered in the same way. Therefore the information held about those services isn't the same.
- The Trust has confirmed to the complainant on numerous occasions that it doesn't hold the information requested in questions 2 and 3 of their request. The Trust therefore doesn't provide patients with 'an approximate date of when they might be seen.' The Trust has provided the complainant with a link to its website where it's explained why this is the case.
- Regarding having a baseline figure in order to monitor its performance, the Trust said it's not able to do this for the reasons it gave in its internal review ie the factors it's described mean that it doesn't hold the information on waiting times.
- The complainant didn't request "a very approximate" figure. As it had advised the complainant in its review, the Trust does not –

and cannot – make predictions on how long someone would wait to be seen who was referred on the date of the request. Its Consultant in Gender Dysphoria had explained that providing predictive data about future waits for this service would always result in extremely speculative, poor-quality data. It would also require long and involved multivariant calculations, with inherent errors. The Consultant had also confirmed that the Trust isn't required to make predictions about prospective waiting times. It's not required to do so as part of its commissioning contract with NHS England as part of modelling the future capacity of the service. The Trust couldn't make such predictions because any calculations wouldn't actually predict future waits. Fundamentally, the Trust says, it doesn't hold the requested information and doesn't hold any 'building blocks.'

20. In correspondence to the Commissioner on 6 December 2023 the complainant noted that the Trust had closed its books to new patients earlier this year. The complainant said that they couldn't see how it would have made that decision without knowing how long new patients would wait.
21. The Commissioner advised the complainant that, in his view, it would be possible for a trust to have a sense that it would take longer than was satisfactory for someone to receive an appointment or treatment, without knowing exactly how long that waiting time was. As the Trust in this case has noted, the complainant didn't request "approximate" waiting times and, as it's also noted, FOIA doesn't require a public authority to speculate. There are numerous complicating factors, which it's explained to the complainant, and which mean that the Trust doesn't hold the information they requested in Q2 and Q3 of their request. The Trust has maintained that position through all its communications with the complainant and in its submission to the Commissioner. The Commissioner accepts the Trust's position, and his decision is that, on the balance of probabilities, the Trust doesn't hold the disputed information.

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**