

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2024

Public Authority: Public Health Wales NHS Trust

Address: No 2 Capital Quarter
Tyndall Street
Cardiff
CF10 4BZ

Decision (including any steps ordered)

1. The complainant has requested, from Public Health Wales NHS Trust (PHW), information about the vaccination status of Covid-19 hospital inpatients and admissions, for specified dates. PHW told the complainant that it hasn't created the type of report the complainant wants for the dates in question, so it doesn't hold the information. PHW has since explained to the Commissioner that whilst it can access the two databases that contain the data required to create the requested information, PHW itself doesn't actually hold the databases in question.
2. The Commissioner's decision is that on the balance of probabilities, PHW doesn't hold the requested information (the report the complainant wants), as it doesn't hold the 'building blocks' (databases) to create it.
3. The Commissioner doesn't require any steps as a result of this decision.

Request and response

4. On 3 April 2023, the complainant wrote to PHW and requested information in the following terms:

“Under [FOIA], please send me the following:

 - 1 - The Vaccine status in COVID-19 hospital inpatients as at 1 January 2023 as follows:

Unvaccinated
Vaccinated- first dose only
Vaccinated- Both doses only
Vaccinated- Booster
Unknown
 - 2 - Comparison of Covid 19 hospital admissions from 1/12/2022 up to and including 31/12/2022 between populations with different vaccination status in Wales”.
5. The complainant gave an example of the type of information they want, and the format (a report PHW had published, relating to February 2022).
6. PHW responded on 4 May 2023. It stated “[PHW] does not hold the information in the requested form”.
7. Following an internal review, PHW wrote to the complainant on 1 August 2023. It said it doesn’t hold the requested information, and explained:

“The report to which you refer was produced some time ago and PHW has since stopped creating it. So whilst I accept that it is likely that [PHW] may have access to the raw data in this matter, we have not conducted the analysis required to produce the report and answer your questions. To do so now would mean creating new information which is excluded under [FOIA]”.

Scope of the case

8. The complainant contacted the Commissioner on 31 August 2023 to complain about the way their request for information had been handled.

9. They indicated that they disagree with PHW's position that it doesn't hold the requested information. They also said it is "vitally important" that PHW publishes the requested information, and argued that if the Covid-19 vaccines are safe and effective, "this information could prove this one way or another".
10. The Commissioner contacted PHW about the complaint. Subsequently, PHW sent a further response to the complainant on 3 October 2023 which it said constituted a formal refusal notice in relation to the raw data. PHW cited section 40(2) of FOIA (the exemption for personal information) to withhold the raw data and explained to the complainant:

"The issue is that we hold the data you request in two different datasets, both of which are fully identifiable so that they can be linked. If I anonymise the datasets sufficiently to remove the risk of re-identification, they will be reduced to a point that you will not be able to do the comparisons that you want to as you would be unable to link the two datasets. To release the raw data without anonymisation however would mean the release of large volumes of sensitive personal data into the public domain ...".
11. In response to PHW's correspondence of 3 October 2023, the complainant said they "cannot understand how the data cannot be anonymised".
12. The Commissioner wrote to the complainant, seeking clarification about what information they want and providing some initial comments.
13. He asked the complainant to clarify whether they want the raw data from the two databases, or a report like the February 2022 report the complainant had referenced in the request. He further asked the complainant whether they want a decision regarding PHW's use of section 40(2) to refuse disclosure of the raw data, or a decision about whether PHW was correct to say it doesn't hold any report for the dates specified in the request.
14. He noted that if the raw data comprises personal, health information relating to individuals, he would be highly likely to uphold PHW's application of the personal information exemption to refuse disclosure of such information 'to the world' under FOIA. He also noted PHW's point that anonymised raw data would be useless to the complainant because

if anonymised, the two databases couldn't be linked and a report like the February 2022 report couldn't be produced.

15. He commented that if the complainant is seeking a report like the February 2022 report, and a decision about whether PHW holds such a report for the dates specified, he doubted such a report (even if held) would be useful to the complainant. This is because he discovered that some text¹ accompanying the February 2022 report explains that the information "... **should not be used to estimate vaccine effectiveness** ...". Presumably, he said, the same would apply to further reports like the February 2022 report based on the same type of data, if PHW had created them. The Commissioner therefore queried the complainant's assertion quoted at paragraph 9 above, that the requested information "could prove" whether the vaccines are effective.
16. The complainant replied urging the Commissioner "... to pursue the information I am seeking – the total number of patients hospitalised with Covid 19 by vaccine status ...". The Commissioner's understanding, therefore, is that the complainant wants a report like the February 2022 report, not the raw data only.
17. The Commissioner therefore considers that the scope of this case is to decide whether PHW was correct to say it doesn't hold a report for the December 2022 dates and 1 January 2023, as specified in the request of 3 April 2023.

Reasons for decision

18. PHW's responses to the complainant indicated that whilst PHW doesn't hold the report the complainant wants, it does hold the raw data.
19. PHW told the complainant it "stopped creating" reports like the February 2022 report.

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[https://www2.nphs.wales.nhs.uk/CommunitySurveillanceDocs.nsf/3dc04669c9e1eaa880257062003b246b/a4f536f72da3962b8025875a0031b3c8/\\$FILE/Survey%20of%20vaccine%20status%20in%20cases%20and%20hospital%20inpatients.pdf](https://www2.nphs.wales.nhs.uk/CommunitySurveillanceDocs.nsf/3dc04669c9e1eaa880257062003b246b/a4f536f72da3962b8025875a0031b3c8/$FILE/Survey%20of%20vaccine%20status%20in%20cases%20and%20hospital%20inpatients.pdf)

20. The Commissioner highlights that the complainant isn't arguing PHW does still create such reports. Rather, the complainant is unhappy that the type of report they want is no longer being created. In their most recent correspondence with the Commissioner, the complainant expressed their anger that "an update" of such information is so difficult to get hold of. In their original complaint correspondence, they said they "think it is vitally important that [this type of information] be updated".
21. The Commissioner's guidance² notes that FOIA only applies to information a public authority already holds in recorded form at the time of a request (see sections 1(4) and 84 of FOIA).
22. If a public authority doesn't hold a particular piece of information that someone has asked for, it doesn't have to create it.
23. However, the guidance also explains that if the public authority has the 'building blocks' necessary to produce a particular type of information, it's likely that the public authority would 'hold' that information, unless it requires particular skills or expertise to put the building blocks together.
24. The Commissioner therefore wrote to PHW to determine whether PHW does 'hold' the report the complainant wants, in the sense that PHW holds the building blocks necessary to create that type of information.
25. In his correspondence, the Commissioner referenced the guidance cited above (paragraph 21), including his comments about exercising skill and judgement to compile information.
26. PHW explained that the information required to respond to both parts of the complainant's request is contained in two different databases.
27. It said both databases contain personal data, there are millions of lines of data, and to answer the request it would be necessary to link the databases and analyse the results – work involving "significant specialist resource".

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#create>

28. PHW explained that the type of report the complainant has referenced was only published on a few occasions, and is no longer produced due to concerns over misuse.
29. PHW said:

“whilst [PHW] **has access to or holds** the raw data required to respond to the request, it has not conducted the analysis required to generate generate information in the form requested. To create that information would require specialist skills ...” (emphasis added in bold).
30. PHW also provided the Commissioner with details of the work required to provide the information the complainant wants. It listed the members of staff (several epidemiologists and scientists), tasks and time involved.
31. The Commissioner wrote back to PHW, querying PHW’s comment (highlighted in bold at paragraph 29 above) that PHW “has access to” or holds the raw data. He wondered whether this comment indicated that PHW doesn’t actually hold both databases and could only ‘access’ one or both of them.
32. He felt it was important to establish whether PHW itself holds the raw data or building blocks for the report the complainant wants. Clearly, if PHW doesn’t, the Commissioner wouldn’t need to consider the ‘exercising skill and judgement’ issue of compiling the requested report.
33. In response, PHW said that whilst it can access the databases, it doesn’t hold them.
34. For example, in respect of the Welsh Immunisation System (WIS) database, PHW explained that this information is held by Digital Health and Care Wales (DHCW). DHCW is a separate public authority.
35. PHW has explained that WIS carries data relating to the vaccination status of the population of Wales. It said a small number of PHW members of staff have access to this data, via “SQL queries”. The Commissioner’s understanding is that SQL is a refence to ‘structured query language’, and that SQL queries are questions or commands used to retrieve certain data from a database.
36. The second database, PHW explained, is called ICNET, a clinical surveillance software platform owned and managed by a third party organisation under contract with NHS England. PHW said this database

holds, amongst other things, data on UK hospital admissions. PHW said a small number of named individuals at PHW have access to this database. Again PHW explained the data is accessed via SQL queries.

37. For each of these databases, PHW said it doesn't routinely hold all of the data even if it has access to it.
38. The Commissioner notes PHW's comments that PHW doesn't hold the two databases, or all of the data in them – one is held by DHCW, and the other is managed by a third party under contract with NHS England.
39. His understanding is that the above bodies don't hold the databases on PHW's behalf.
40. He notes access to the databases at PHW is limited to a few members of staff.
41. His website guidance notes that generally, a public authority wouldn't hold information from a third party's database unless it has downloaded, saved or printed it out.
42. That isn't the case in this instance. PHW has emphasised to the Commissioner that if it were to consider compiling and issuing the report the complainant wants, this would involve PHW accessing the two databases, "and downloading further significant amounts of data that we do not hold".
43. The Commissioner considers that on the balance of probabilities, PHW doesn't hold the databases or building blocks required to produce the requested report for the dates the complainant specified in the request.
44. Consequently, he finds that, on the balance of probabilities, PHW doesn't hold the requested information.

Right of appeal

45. 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

46. 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.
47. 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

Daniel Kennedy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF