

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2024

Public Authority Address: Norfolk & Suffolk NHS Foundation Trust
Kestrel House
Hellesdon Hospital
Drayton High Road
Norwich
NR6 5BE

Decision (including any steps ordered)

1. The complainant has requested information relating to ADHD¹ and ASD² referrals. The Trust refused the request under section 12 (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that the request engages section 12 and therefore the Trust was entitled to refuse it. In failing to provide any reasonable advice and assistance, the Trust breached section 16 (advice and assistance) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 3 January 2024, the complainant wrote to the Trust and requested information in the following terms:

¹ Attention deficit hyperactivity disorder

² Autism spectrum disorder

"Since the inception of the new NDD pathway (approximately May 2022?) how many children and young people (age 0-18) have been:

Referred to the pathway for an ADHD assessment

Accepted for ADHD assessment

Refused an ADHD assessment

Diagnosed with ADHD

Are still awaiting initial triage

Are still awaiting an assessment

Referred to the pathway for an ASD assessment

Accepted for ASD assessment

Refused an ASD assessment

Diagnosed with ASD

Are still awaiting initial triage

Are still awaiting assessment"

5. The Trust responded on 27 February 2024. The Trust provided its response via a table, which is a format largely incompatible with What Do They Know, the platform through which the complainant made their request.
6. The complainant flagged this with the Trust, who reissued its response on 29 February 2024. It disclosed the amount of referrals for ADHD and ASD separately but the rest of the information disclosed was combined for ADHD and ASD.
7. The complainant wrote to the Trust on 29 February 2024, raising the following concerns:
 - That the disclosed figures were combined for ADHD and ASD, and not separated as per their request;
 - That the figures disclosed didn't add up;
 - That the information disclosed didn't include the figures for those assessed, but not diagnosed, with either ADHD or ASD.
8. The Trust provided the outcome to its internal review on 22 April 2024. It refused to provide certain information under section 12 (cost of compliance exceeds appropriate limit).

9. Again, on 22 April 2024 the complainant raised concerns that this further response wasn't clear. Therefore the Trust reissued its response on 5 June 2024.

Scope of the case

10. The complainant contacted the Commissioner on 30 April 2024 to complain about the way their request for information had been handled. Specifically, that the Trust had largely failed to disclose the separated figures for ADHD and ASD referrals, as per their request.
11. During this investigation, the Trust confirmed to the Commissioner that to do so would exceed the appropriate limit and therefore the request was being refused under section 12.
12. The Commissioner considers that the scope of his investigation is to consider if this is the case.
13. The Commissioner can't consider whether any of the information disclosed in response to the request is inaccurate, as it falls outside of FOIA and the Commissioner's remit to do so. Furthermore, the Commissioner notes that the request doesn't ask for figures for those assessed, but not diagnosed, with either ADHD or ASD.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. This decision concerns section 12 of FOIA, full details of the exemption can be found in the Commissioner's [Decision notice support materials | ICO](#).
15. The complainant queried why some information they requested was provided separately, for ADHD and ASD as per their request, whereas other information was disclosed for the two combined.
16. The Trust has confirmed that it's applied section 12 to the majority of the request because it can't provide the separate figures the complainant is requesting for ADHD and ASD. However, the Trust has provided separate figures for ADHD and ASD in relation to when an individual first contacted the Trust for an assessment.
17. This data was readily accessible to the Trust, and the Commissioner understands it took an analyst just two hours to separate this data out, and so it was disclosed to the complainant in response to their request.

18. The Trust has explained:

"The Trust was however able to provide some figures to identify a first contact and the purpose for that contact either an ADHD assessment or ASD assessment. This is a different data set which is more accessible (already held by the Trust) so the data could be located and provided to confirm that out of the 1811 referrals in the time period 956 ADHD assessments were undertaken and 132 ASD assessments were undertaken."

19. Returning to the rest of the data and why it can't be separated out, the Trust has explained:

"The Trust can separate the requested information for ADHD and ASD however to locate and collate this specific data would take over the appropriate limit. The data is held within our electronic patient record (EPR).

To extract the data would mean Structured Query Language (SQL) coding would have to be written by an Informatics Analyst to extract the data and then cross check the data via peer review. This data set however can only be created where the information is recorded within a reportable format field.

Due to the inconsistent way that diagnosis are record in the EPR by clinical teams 879 service users did not have a diagnosis recorded in a reportable format field. This would have meant all 879 service user records held in the EPR would need to be manually reviewed to identify the outcome of a diagnosis recorded either within a clinical note or a letter as free text."

20. So, the Trust is concerned that to write, test and review the SQL code would take eight hours to complete. This would provide the requested data, separated for ADHD and ASD, for approximately a third of the total records.

21. Then, due to the inconsistency referred to within paragraph 19, 879 records would need to reviewed manually and 'We estimated therefore that it would take 30 minutes to review each record to ascertain any entries made after the first contact (ADHD or ASD Assessment) to see if the details were recorded in the EPR and update the outcome against each service user.'

22. The Trust has provided the following final estimate for compliance with the request:

- Writing, and testing SQL code and complete data extract = 6 hours
- Peer review outcome from SQL extract = 2 hours

- Data set collation and review (First Contact) = 2 hours
- Manual review of 879 records (30 minutes each) = 439.5 hours

Total Hours = 449.5 hours

23. Any estimate must be based on cogent evidence and the quickest way of retrieving any information. Unfortunately, the Trust has confirmed that an inconsistency with its reporting means that 879 records need to be manually reviewed. There's no quicker way to review this information because the diagnosis isn't recorded in a reportable field, rather in free text or a clinical note.
24. Half an hour per record seems excessive to the Commissioner, especially since the Trust knows what it's looking for and where. However, even if the process became doubly efficient, taking fifteen minutes to manually review each record, compliance with the request would still grossly exceed the appropriate limit.
25. The Trust has already carried out the work necessary to separate the first contact information, and it took two hours, so the Commissioner is satisfied this can act as a sampling exercise for separating out the rest of the requested information.
26. Ultimately, the Commissioner is satisfied that, to separate the figures already disclosed to the complainant for ASD and ADHD would exceed the appropriate limit for the Trust. Therefore, it doesn't have to comply with the request.
27. When section 12 applies to one part of a request, it automatically applies to the request as a whole. The Trust acknowledges that it should have applied section 12 to the whole request in the first place. However, it chose to separate out the first contact information for ADHD and ASD, because this information was readily available to it and disclose it to the complainant.
28. Whilst the Commissioner acknowledges that this was done to be helpful, he would dissuade public authorities from doing so. As in this case, it can create confusion and also assumes that a requester is more interested in receiving certain information over other information. As soon as a public authority realises that complying with any part of the request would exceed the limit, it must inform the requester.

Section 16 – advice and assistance

29. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
30. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain to the requester how they could refine their request so it falls within the limit. In some cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
31. In this instance, the Trust acknowledges that it didn't provide any such advice and assistance:

“The Section 16 guidance would have simply explained to the requestor that the only data we could provide split out related to first contact (ADHD or ASD Assessment). This piece of work was completed already as the data set was easily accessible, so it was provided as part of the response.

The only guidance we would have provided under Section 16 was that we could provide the split data relating to first contacts.

No further guidance could be provided in how to rephrase or slim down the request to enable all the data to be provided split, we felt that providing what data we had been able to provide was the correct action to follow.”

32. The Commissioner disagrees. The request clearly asks about patients since 'the inception of the new NDD pathway (approximately May 2022).' The Trust could have advised the complainant that a request which focused on a much smaller timeframe, for example, a single month, would be more likely to fall within the appropriate limit.
33. Whilst the Commissioner has found a breach of section 16, he doesn't require the Trust to take any further steps.

Other matters

34. The Trust should keep in mind the formatting issues it's encountered, when providing further responses via the What Do They Know platform.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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