

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2014

Public Authority: The Clatterbridge Cancer Centre NHS Foundation Trust

Address: Clatterbridge Road, Bebington, Wirral, CH63 4JY

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of patients who started radiotherapy courses.
2. The Commissioner's decision is that The Clatterbridge Cancer Centre (CCC) has correctly applied section 12(1) of the FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 11 September 2013, the complainant wrote to CCC and requested information in the following terms:

"For each radiotherapy/cancer centre in England, the number of individual (NHS) patients who started a course of radiotherapy in a given financial year, set out on the following basis:

1. *The number of patients treated by the centre who were from within the centre's radiotherapy catchment area (R);*
2. *The number of patients treated by the centre who were from outside the centre's radiotherapy catchment area (I); and*
3. *The number of patients from within the centre's radiotherapy catchment area who were treated at another radiotherapy/cancer centre (E).*

This information is requested for each financial year that radiotherapy datasets are available and complete. It is expected that this will be for each of: 2009/10, 2010/11, 2011/12 & 2012/13.

The same radiotherapy catchment areas should be used for each year's analysis, and should be those in place for 2009/10. These will be have been determined by using National Clinical Analysis and Specialised Applications Team's established Method A (which are described in its 2002 document: "Cancer Networks Catchment Area and Population Estimates").

Table 1 below provides an example layout that would meet the requirements for each year. If there are changes to the radiotherapy/ cancer centres because of mergers, closures or new centres opening then these should be highlighted, and any impact on the analyses described.

Please search/ utilise relevant databases (including online, digital, paper, personal computers, email and electronic storage devices). I would prefer the information to be provided in Excel format, if possible.

If you have any problems with the request please do not hesitate to contact me in order to see if such problems can be resolved."

5. CCC responded on 9 October 2013. It provided some information within the scope of the request but refused to provide the remainder. It cited section 12 of the FOIA as its basis for doing so.
6. Following an internal review CCC wrote to the complainant on 14 January 2014 and maintained its position. In addition, it stated:

"Although the data you are requesting for your medical research is not patient identifiable, due to the catchment area numbers there is a risk that some information may make this information patient identifiable.

Given the potential risk of individuals or groups of patients being identified, it is for this reason under the Data Protection Act 1998, that the Trust will not be able to provide the data, as we must protect the identity of our patients."

7. The Trust therefore additionally cited section 40(2) of the FOIA as a basis for withholding some of the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 20 February 2014 to complain about the way his request for information had been handled. In particular he stated:

"The main points which arise out of my complaint are that the Trust:-

- holds the information sought by my requests,*
- has disclosed only one part (approximately one quarter) of the information which I originally requested, and has failed to disclose the remainder,*
- has failed to disclose the information it holds and which was requested,*
- has failed to provide adequate reasons for non-disclosure,*
- has provided reasons for non-disclosure which are not supported in fact or in law*
- has failed to seek to clarify with me any part of the request which may need modifying or amending in order to comply with their lawful requirements.*

9. The Commissioner explained to the complainant that:

- the Trust had not denied holding the information requested however it had applied exemptions that it considered to be relevant;
- that the Commissioner's role is to determine whether the Trust has provided the complainant with all the information he is entitled to subject to any exemptions;
- the Trust has a duty under section 16 of the FOIA to 'provide advice and assistance' with regard to refining or clarifying a request so that it may be able to provide information within scope of a request;
- section 12 and section 40(2) are absolute exemptions and therefore not subject to the public interest test.

10. The Commissioner considers the scope of this case to be to determine if the Trust has correctly applied the exemptions it has cited.

Reasons for decision

Section 12 – appropriate limit

11. Section 12(1) provides that a public authority is not obliged to comply with a request for information where the authority estimates the cost of doing so would exceed the appropriate limit. This limit is not specified in FOIA itself but is instead specified in the accompanying Freedom of

Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).

12. The appropriate limit has been set at £600 for central government departments, legislative bodies and the armed forces and £450 for all other public authorities, which includes CCC. The Fees Regulations further clarify that the costs associated with these activities should be worked out a standard rate of £25 per hour per person. This is equivalent to 18 hours work.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate.
15. CCC explained that it was not possible to provide a sample of the data as the information is not available in the format requested by the applicant and it would take a considerable amount of time to collect and calculate the data even in order to provide a sample. This is due to the way in which the data is collected, held and calculated by the National Clinical Analysis & Specialised Applications Team (NATCANSAT).
16. However, CCC has provided details of the methodologies used by NATCANSAT and the nature of the data that is collected. Further details of the methodologies are provided in an annex at the end of this decision notice.
17. CCC stated that it had explained in great detail to the complainant these methodologies and the reasoning for why all of the information he has requested would exceed the appropriate limit.
18. CCC explained that the 'catchment' date requested for 2009/10 and 2011/12 was disclosed to the complainant. The population 2009/10 and 2011/12 data bases had been archived prior to the request. The table of unique patients within these population databases were held separately than the secure Structured Query Language (SQL) database, which is the National Radiotherapy Data Set (RTDS). These are both stored

separately and held unlinked for governance reasons. NATCANSAT had to "un-archive" the patient and re-link them as this was required for geographical analysis with the Geographical Information System (GIS).

19. CCC further explained that the time taken to restore the databases and recalculate the population figures using method B and then to apply the method A GIS, a methodology not previously calculated requiring senior analyst time, together with understanding and replying to the additional data requests was greater than 18 hours.

Estimate of costs

20. CCC had already disclosed some of the information requested and provided an explanation with regard to the work involved.

Project Hours up to 4 October 2013 for information already disclosed:

16.25hrs @ AfC Band 8a GIS Specialist Analyst

Band 8A at Point 38 = $£47,099 \div 52 \div 5 \div 7.5 = £24.15$ per hour

$£24.15 \times 16.25 = £392.43$

2.5hrs @ AfC Band 8c Head of NATCANSAT

Band 8c at Point 46 = $£67,805 \div 52 \div 5 \div 7.5 = £34.77$ per hour

$£34.77 \times 2.5 = £86.93$

Total cost = $£479.36$

21. CCC explained that this costing is relatively low as NATCANSAT had already produced a large portion of the work for the two years in question.
22. Additional work was needed for the purpose of this request. In relation to the cost to collate and prepare the data for years 2010/11 and 2012/13 (and to re-assess the data for 2011/12 based on the complainant's format) the calculation of cost is detailed below. Further details of the work and issues involved are detailed in the annex.

i. **Section 1: Convert Data into Unique Patients = £4,329.93**

3.5hrs x Band 8c

37.5 hrs x Band 8a

74 hrs x Band 6

ii. **Section 2: Transfer of Data into GIS = £6,974.43**

3hrs x Band 8c
131.25 hrs x Band 8a

iii. **Section 3: Linkage & Production of Data Tables = £1,031.08**

1hr x Band 8c
18.75hrs x Band 8a

Total cost = £12,335.44

23. CCC stated that the above costings are based on what NATCANSAT would normally apply to 'client' data requests based on the grade of staff doing the work. The total hours predicted to do the work in this instance is 270 hours. Even calculated on the basis of £25.00 per hour as stated in the Fees Regulations, this would still equate to £6,750.00.
24. In addition, CCC explained that each section of information cannot be produced in isolation (i.e. Section 3 must follow Section 1 and 2).
25. CCC further explained that further issues involved in producing this data would involve:-
- Transfer of summary data containing number of unique patients for each postcode into the GIS application caused additional work.
 - The count of patients has never before been an outcome of the GIS analysis therefore we needed to understand the governance of releasing these types of data, bearing in mind the potential sensitive data and the Handling of Small Numbers Agreement i.e. less than 6 patients.
 - Data gaps and/or duplication due to missing NHS number, lack of NHS number validation, national trace validation, onset of new primary cancers, patient having moved address (new postcode), re-treatment with radiotherapy are all potential errors in reporting. All have to be considered.
 - The GIS applications are loaded with ONS postcode database which is released every year. This is a considerable resource which was commissioned by the National Cancer Action Team in 2010 (census data 2001, mid-year estimate 2009).
 - The next commission funded by Public Health England was to calculate 2011/12 Radiotherapy Catchment population was in 2012 (census data 2001, mid-year estimate 2010).

- In 2010/11 the same ONS postcode database was used and took the number of patients treated in 2009 to 2011 inclusive.
- 2012/13 catchment population will use ONS census data 2011. There are problems with this database and CCC has not done the work
- The request asked for "*The same radiotherapy catchment areas should be used for each year's analysis, and should be those in place for 2009/10*". Areas change over time hence the recalculation.

For example, new centres in Taunton and Somerset NHS Foundation Trust opened in June 2009 and Peterborough and Stamford Hospitals NHS Foundation Trust in May 2011 transforming the surrounding catchment areas. CCC stated it could not predict where the patient would have received radiotherapy in 2009/10 or indeed if they would have got treatment.

26. From the evidence he has seen during the course of his investigation, the Commissioner is satisfied that CCC has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and CCC is not required to comply with the request.
27. As the Commissioner has found that CCC correctly applied section 12(1) to the request, he has not gone on to consider the application of section 40(2).

Section 16 - advice and assistance

28. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
29. The Commissioner notes the complainant states that CCC "*failed to seek to clarify with me any part of the request which may need modifying or amending in order to comply with their lawful requirements*"
30. CCC considered that the complainant had been provided with advice and assistance throughout the request and been provided with information where possible. The complainant provided explanations of the information requested and CCC provided the complainant with what data it could together with detailed explanations and advice as to why all the information could not be disclosed given the methodologies used in collating this data as part of the NATCANSAT service.

31. The Commissioner has reviewed the correspondence between CCC and the complainant and considered this along with the further submissions provided by CCC.
32. The Commissioner considers that CCC has provided explanations to the complainant's follow up queries, and endeavoured to provide as much information as possible. He therefore finds that CCC has complied with its obligations under section 16 of the FOIA.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF

Annex

Methodology

36. Method A is known as the "Provider Dominant Catchment Areas". This is where each patient is mapped to a census ward using the postcode. Each census ward is then allocated to the healthcare provider with the greatest market share of the patients (or events) in that census ward. This is a "first past the post/winner takes all" methodology.
37. Method B is known as the "Market Share" where each patient is mapped to a census ward using their postcode. A portion of the population of each census ward is then allocated to each of the providers with the market share of the patients (or events) in that census ward. Thus this is a "proportional representation" methodology.

*Work involved in producing 2009/10, 2010/11, 2011/12 & 2012/13
Unique Patients to the 2009/10 Catchment Area*

Section 1: Convert Data into Unique Patients

- RTDS is not held at unique patient level. Patients are recorded at Episode, Attendance, Prescription and Exposure level.
- The count of 'patients' has not been an outcome of the GIS (or RTDS analysis) and therefore data would need to be converted into one record per patient. There are lots of assumptions, and work needed in order for this to happen.

For example:

- patients with no NHS Number
- patients with invalid NHS Number
- patients attending more than one Provider
- patients treatment spreading over one year
- patients have more than one treatment over a number of years
- patients having an NHS Number in one providers submission, and only local patient ID in another providers submission
- patients can also move addresses, and each of these postcodes are held
- patients with more than one primary diagnosis

- patients who are re-treated
- how to assign patients to each year
- patients not resident in England
- patients not treated in England
- This process would then need to be repeated for each 'year' of analysis with careful decisions around how to treat patients in different years.

Section 2: Transfer of Data into GIS

- Geocode the Patient Extract (add on the geographical information)
- Some postcodes will not match the ONS released database.
- Identifying postcodes and 'clean up' any that can be re-assigned (e.g. where numbers have been input instead of letters).
- Calculate the total number of patients between Providers within each small geographical area (e.g. Census Ward or MSOA).
- Calculate the spread of patients between Providers within each small geographical area.
- The 2009/10 areas that are requested to be used as the common row is currently a 'dissolved' GIS file. This means that the work to produce the 'Method A' for the 2009/10 year would need to be redone, so that a Provider could be assigned to a small geographical area. This is a detailed piece of analysis in itself.

Section 3: Linkage & Production of Data Tables

- Link the small geographical areas together for each of the 4 years.
- Consider methodology to assign patients from new centres (e.g. Peterborough) to 'old' catchment areas.
- Produce table as requested in the FOI request.
- Anonymise small numbers (and their totals)