

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2017

Public Authority: South West Yorkshire Partnership NHS
Foundation Trust

Address: Fieldhead
Ouchthorpe Lane
Wakefield
WF1 3SP

Decision (including any steps ordered)

1. The complainant made a seven part request for information relating to Psychological Therapies and the Art Psychotherapy Service. Under section 11 of the FOIA, she expressed a preference to have the information communicated in a particular format. South West Yorkshire Partnership NHS Foundation Trust (the Trust) provided information in relation to parts 2, 3, 4 and 5 of the request but has explained that it does not hold information falling within the scope of parts 1, 6 and 7 of the request. However, the complainant considers that more information must be held in relation to all parts of the request.
2. The Commissioner's decision is that the Trust –
 - Has complied with its obligation under section 11 (means by which communication is made) of the FOIA.
 - Has, on the balance of probabilities, provided all the information that it holds within the scope of parts 2, 4 and 5 of the request, and has complied with its obligations under section 1(1) (general right of access) of the FOIA with regards to these parts of the request.
 - Held further information within the scope of parts 1, 3, and 6 of the request that it had not provided and has breached section 1(1) of the FOIA with regards to these parts of the request.

- Has failed to state whether or not it holds information within the scope of part 7 of the request and has not complied with its obligations under section 1(1) of the FOIA with regards to this part of the request.
 - The Commissioner also finds that the Trust breached section 10(1) of the FOIA with regards to parts 1, 3 and 6 of the request, as it did not provide to the complainant, within 20 working days, the information it held within the scope of these parts of the request. In addition, the Trust did not communicate to the complainant, within 20 working days, that it holds no relevant information in relation to part 7 of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
- In relation to parts 1, 3, and 6 of the request, the Commissioner requires the Trust to provide the information held in accordance with section 1(1)(b) of the FOIA or issue a valid refusal notice as set out in section 17 of the FOIA.
 - In relation to part 7 of the request, the Commissioner requires the Trust to issue a fresh response confirming whether or not it holds the information requested in this part of the request in accordance with section 1(1)(a) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 March 2016, the complainant wrote to the Trust and requested information in the following terms:

"1. The most recent Contract between Calderdale Commissioning Group and SWYPFT regarding Psychological Therapies and Art Psychotherapy specifically, including details of any contract penalties that may be applicable.

2. The financial budget over the last three years for Psychological Therapies and for the Art Psychotherapy Service specifically.

3. Any documents (including memos, internal correspondence, emails and minutes from meetings from the last 3 years) related to the clinical and financial analysis of Psychological Therapies including any specific analysis of the Art Psychotherapy Service and any analysis related to proposals to close the service.

4. Any documents (including memos, internal correspondence, emails and minutes from meetings over the last three years) relating to the proposed closure of the Art Psychotherapy Service including any discussion about its relationship with evidence based practice and NICE guidelines.

5. Any documents (including memos, internal correspondence, emails and minutes from meetings over the last three years) relating to communication with Service Users about the proposed closure of the Art Psychotherapy Service.

6. Any documents (including memos, internal correspondence, emails and minutes from meetings over the last three years) related to the decision to close the waiting list for the Arts Psychotherapies Service and the number of people on the waiting lists of both Art Therapists at the time the waiting list was closed

7. Any documents (including memos, internal correspondence, emails and minutes from meetings over the last three years) regarding psychological therapies and specifically the Art Psychotherapy Service that relate to the Calderdale Clinical Commissioning Group's current Strategic 5 year plan on Mental Health."

6. The Trust responded on 12 April 2016, as follows –

Part 1 – "the Trust's contract with Calderdale CCG is a 'block contract' covering the provision of all mental health services. Therefore, there is no separate contract, or part of the contract relating specifically to psychological or art therapies."

Part 2 – "the budget for art therapy relates to staffing costs. This is currently 1.5 whole time equivalent staff, remunerated at NHS pay band 8a."

Part 3 – "Art therapy is provided as a component of psychological therapy and is not a separate service. All Trust services are subject to review as part of ensuring services continue to meet the needs of local populations." The Trust also provided the following link on its website for further information about the transformation of the Trust's services:
<http://www.southwestyorkshire.nhs.uk/about-us/transformation/>.

Part 4 – the Trust referred to its response to part 3 of the request. With regards to the *"evidence based practice and NICE guidelines"* the Trust stated that *"the art therapy is from the National Institute for Health and Care Excellence"* and provided the website details (www.NICE.org.uk).

Part 5 – the Trust provided *"communications with service users regarding the current review of the art therapy component of the psychological therapy service."*

Part 6 – *"the decision to close the waiting list was made following careful discussion and consideration. Information relating to this decision is not available in the format requested, at the time of your request"*.

Part 7 – *"the Calderdale Clinical Commissioning Group (CCG) is aware of the Trust's review of mental health services. Any information relating to the CCGs five year plan should be accessed from the CCG directly."*

7. The complainant emailed the Trust on the 7 June 2016 requesting that an internal review of the responses it provided be carried out, and asked the Trust to quote an exemption where appropriate. The complainant sent a letter to the Trust on the 21 June 2016 explaining her reasons for requesting the review of the request.
8. Following an internal review the Trust wrote to the complainant on the 11 August 2016, stating that the Trust's response was accurate. The Trust also provided the following –

Part 1 – the Trust stated that the contract is the NHS Standard Contract which makes no reference to psychological or art therapies nor any penalties applicable.

Part 2 – the Trust confirmed that the complainant had been provided with the accurate pay budget information. However, it provided additional budget information.

Part 3 – the Trust confirmed that the complainant had been *"correctly advised that the art psychotherapy is not a separate service but a component of psychological therapy services"*. It confirmed that no information was held in relation to art therapy. However, it provided additional information *"in relation to the transformation of acute and community mental health services and the service standards and principles"*.

9. Part 4 – the Trust confirmed that the complainant has been provided with accurate advice. However, it provided *"a summary of the evidence by the Trust's professional lead for psychological services"* and *"the slides referred to at the engagement event in Todmorden back in April"*.

Part 5 – the Trust confirmed that this information had been provided to the complainant.

Part 6 – the Trust stated that the complainant was accurately advised that this information was not held.

Part 7 – the Trust confirmed that the complainant was provided with the correct advice. It also referred the complainant to the additional information provided with the response to part 3 of the request.

Background

10. In January 2016 service users of the Art Psychotherapy Service were informed that the two therapists who were providing the service had been issued compulsory redundancy notices. This would have resulted in the closure of the service by the end of March 2016. However, a service user made a legal challenge under section 242 of the National Health Service Act 2006 to prevent the closure of this service.

Scope of the case

11. The complainant contacted the Commissioner on 17 February 2017 to complain about the way her request for information had been handled.
12. The Commissioner considers the scope of this case is to determine whether the Trust has disclosed to the complainant all the information that falls within the scope of the request and has complied with section 1(1) and a section 10(1). She will also consider whether the Trust's original response to part 6 of the request, in which it stated that it did not hold the information requested in the preferred format specified by the complainant, was compliant with section 11.

Reasons for decision

Section 1 – general right of access

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.

14. Where there is some dispute between the amount of information identified as being held by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
15. Therefore, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or whether such information was held at the time of the request).
16. In its submission to the Commissioner, the Trust confirmed that when searching for information falling within the scope of this request, information was requested from the service (the information owner) through the current General Manager. The General Manager's response was confirmed by both Calderdale and Kirklees Business Delivery Unit District Director and the Deputy Director.
17. The Trust has explained that searches were undertaken electronically and manually by potential information owners, and customer services sought assurances that a thorough search had been completed. The Trust confirmed that all staff have a responsibility to work within the Trust's Information Security Policy Ensure and to ensure safe storage of data and information.
18. The Trust has stated that it is not 'paperlight' accredited and maintains both electronic and manual records. It confirmed that the search included emails and paper documentation.
19. The Trust has stated that the service has not indicated that there was any recorded information ever held relevant to the scope of the request but deleted or destroyed. It has advised that it is not possible to definitively confirm this because there have been changes in personnel within the business unit. It did, however, clarify that reasonable attempts have been made to identify any relevant records that fell within the scope of the request.
20. With regards to part 1 of the request, the Trust has explained that it does not have a specific contract between the Trust and the CCG. It has confirmed that there is a single block contract between Calderdale, Greater Huddersfield, North Kirklees and Wakefield CCG which does not specifically reference the service relating to the complainant's information request. The Trust has advised that this is an NHS Standard Contract and does not reference the service or include service specification or any contract penalties. The Trust has explained that it has not provided the complainant with the NHS Standard Contract as it did not deem it as fulfilling the information request, but offered an

explanation about the NHS Standard Contract to be more helpful. However, the Trust has advised that the NHS Standard Contract is publicly available on the NHS England website via the following link: <https://www.england.nhs.uk/nhs-standard-contract/17-18/>, as well as providing a copy to the Commissioner.

21. The Commissioner accepts that there is not a “separate” contract for the psychological or art therapies. However, she is of the view that the NHS Standard Contract should have been provided in response to part 1 of the request as this is the contract that applies to the services in question.
22. Furthermore, having examined the NHS Standard Contract provided and in the link referred to in paragraph 20 of this decision notice, the Commissioner is of the view that it does contain information that would fall within the scope of part 1 of the request. For example, in “Schedule 4 – quality requirement” of the NHS Standard Contract 2017/18 and 2018/19 – Particulars (Shorter Form), it provides details of the Operational Standards/National Quality Requirements for improving Access to Psychological Therapies, and includes the consequences for a breach of those standards/requirements. The Commissioner notes that the NHS Standard Contract published in the link referred to in paragraph 20 of this decision notice and provided to her by the Trust, was not published at the time of the request. However, having searched online the Commissioner has located the 2016/17 contract and this provides details of the Operational Standards/National Quality Requirements for improving Access to Psychological Therapies which also include the consequences for a breach of those standards/requirements.
23. The Commissioner must therefore find that the Trust breached section 1(1)(b) with regards to part 1 of the request, as it did not provide to the complainant the information it held within the scope of the request.
24. With regards to part 2 of the request, the Trust has explained that it provided information regarding pay and non-pay budgets over the last three years in its letter to the complainant dated 11 August 2016. It stated that the letter included an explanation that non-pay budgets cover all costs on the psychology cost centre and there is no allocated split for art therapy which is a component of the broader therapy offer and not a standalone service.
25. The Commissioner accepts that, on the balance of probabilities, the Trust does not hold any further information which falls within the scope of part 2 of the request.
26. With regards to part 3 of the request, the Trust has explained that the link it provided to the complainant in response to this part of the request

related to web based information the Trust made available about the transformation of acute and community mental health services, of which psychology is an element. It went on to explain that all Trust services have been undergoing review since 2013, with varying review, redesign and implementation phase timeframes. It stated that web based information is by its nature subject to continual update.

27. The complainant has provided the Commissioner with a document produced by the Trust which she states was provided by the Trust to the Adults, Health and Social Care Scrutiny Panel in April 2016. This documents includes information about the Art Psychological Therapy Service, such as the average amount of time a service user spends in Art therapy and the number of people on the waiting list. The complainant therefore believes that this indicates that some level of analysis has taken place at some point.
28. The Trust has explained that the information was shared verbally by a Trust representative at the Adults, Health and Social Care Scrutiny Panel in April 2016. It has confirmed that no written information was provided and no material has been identified in Trust paper and electronic searches. The Trust has provided the Commissioner with the agenda, paper and minutes in respect of this scrutiny item which it says indicates that the only written submission at the meeting in relation to this agenda item was that submitted by the complainant.
29. Having looked at the document that the complainant has stated that the Trust provided to the Adults, Health and Social Care Scrutiny Panel in April 2016, it does include the average amount of time a service user spends in Art therapy. It follows that the Trust must have held this information at the time of receiving the complainant's request in March 2016 in order to be able to produce the document for the Adults, Health and Social Care Scrutiny Panel in April 2016.
30. The Commissioner must therefore find that the Trust breached section 1(1)(b) with regards to part 3 of the request, as it did not provide to the complainant the information it held within the scope of this part of the request.
31. With regards to part 4 of the request, the Trust has explained that the Trust staff were engaged in the transformation of services agenda. It went on to explain that unfortunately, a therapist shared information about their personal circumstances with service users prior to the Trust having the opportunity to engage with individuals who accessed art therapy. This led to some service users believing the Trust did not intend to engage. The Trust has stated that this was not the case. The Trust has stated that it did not engage with local communities about art therapy specifically over and above the broader service change

engagement. The Trust has explained that Psychology staff delivering art therapy were advised that their roles were likely to be redundant. The Trust offered reviews to individuals to ensure their clinically assessed needs were met going forward. The Trust has explained that individuals are offered regular reviews of their care to ensure it continues to meet their needs. The Trust has explained that in reviewing the service offer, the Trust was not withdrawing services; psychological therapy input would continue based on individually assessed need.

32. In the complainant's correspondence to the Commissioner she has referred to the Mental Health Strategies Independent review of Art Therapy in Calderdale dated November 2016 and in particular the following section –

"In 2015, Trust managers considered Art Therapy provision in the light of both the transformed psychological therapies delivery and the Trust's overall financial position and proposed the withdrawal of Art Therapy from the mental health offering, with the consequent compulsory redundancy of the art therapists.

The redundancy proposal on the grounds of organisational change was put to the art therapists in August 2015. Trust managers drew on NICE guidance for the provision of Art Psychotherapy and the lack of fit of the long-term model of Art Therapy practice with the transformed service offering, emphasising recovery and evidence-based practice, to support the proposal."

The complainant is of the view that it seems unrealistic that this proposal occurred within the Trust without generating any documentation that can be provided in response to her request.

33. The Trust has explained that at the service user engagement events in April 2016, the Trust's professional lead for psychological therapies shared his view on the effectiveness of art therapy in line with the evidence base. In the Trust's letter to the complainant dated 11 August 2016, it directed her to the National Institute for Health and Clinical Excellence website to view the evidence base for art therapy. It confirmed that a summary of the evidence by the Trust's professional lead and a copy of the slides used at the service user engagement events were also shared with the complainant as attachments to the letter dated 11 August 2016.
34. The Commissioner accepts that, on the balance of probabilities, the Trust does not hold any further information which falls within the scope of part 4 of the request.

35. With regards to part 5 of the request, the complainant has stated that the Trust has provided her with correspondence that was sent to service users in 2016 in relation to the current review. However, the complainant has gone on to explain that the purpose of this request was to see if the Trust had carried out any consultation with any of its service users (other than those directly using the service, whom she states were not communicated with prior to 2016) regarding the proposed closure of the Service. The complainant says that she is asking this as she has stated that the Trust claimed that it had carried out engagement events on a wider level that related to this change, and she would like to see the evidence for this claim. The complainant has said that it would be useful if the Trust could confirm that since the outset of the process of trying to restructure the service in 2013 and then closing the waiting list in 2014 and up until service users were informed of the closure of the service in January 2016, there were no form of communications with any service users. If there were communications, she would like to be provided with them.
36. The Trust has stated that, with regards to part 5 of the request, its services have been subject to transformation to ensure local needs are met. It has explained that service user and carer engagement has underpinned that process. The Trust has explained that the complainant asked for information on communication with service users about art therapy and this was provided. The Trust clarified that art therapy is not a separate service, rather a component of psychological therapy, as part of the acute and community mental health service offer. The Trust has confirmed that it referred the complainant to a report on the broader service user engagement at the time of her request.
37. The Commissioner accepts that, on the balance of probabilities, the Trust does not hold any further information which falls within the scope of part 5 of the request.
38. With regards to part 6 of the request, as detailed in paragraph 27 of this decision notice, the complainant has provided the Commissioner with a document produced by the Trust which she states was provided by the Trust to the Adults, Health and Social Care Scrutiny Panel in April 2016, and includes the number of people on the waiting list.
39. The Trust has explained that there is no evidence of written material used to present to the Adults, Health and Social Care Scrutiny panel. It has gone on to explain that verbal information may have been shared about the number of people accessing the service but it has been unable to clarify this.
40. Having looked at the document that the complainant has stated that the Trust provided to the Adults, Health and Social Care Scrutiny Panel in

April 2016, it does include the number of people on the waiting list. It follows that the Trust must have held this information at the time of receiving the complainant's request in March 2016 in order to be able to produce this document for the Adults, Health and Social Care Scrutiny Panel in April 2016.

41. The Commissioner must therefore find that the Trust breached section 1(1)(b) with regards to part 6 of the request, as it did not provide to the complainant the information it held within the scope of this part of the request.
42. With regards to part 7 of the request, as explained above the Trust's contract with the CCG is under the NHS Standard Contract. The Trust has stated that it advised the complainant that any CCG strategic plan should be obtained directly from the commissioner. The Trust has confirmed that it does not hold information specifically referencing art therapy as this is not a separate service but a component of psychological therapies.
43. On the basis of the submission by the Trust, the Commissioner accepts that, with regards to part 7 of the request, the Trust does not hold information regarding the CCG's five year plan. However, the Trust has not complied with section 1(1)(a) of the FOIA as it did not inform the complainant whether or not it held any information that fell within the scope of part 7 of the request.

Section 10 – time for compliance

44. Where a public authority is obliged to communicate the requested information, section 10 provides that a public authority must do so within twenty working days of the date on which the request was received.
45. As the Commissioner finds that the Trust breached section 1(1)(a) in relation to part 7 of the request and 1(1)(b) in relation to parts 1, 3 and 6 of the request, the Commissioner also finds that the Trust breached section 10(1) of the FOIA for not identifying that it held relevant information and not providing it to the complainant within 20 working days.

Section 11 – means of communication

46. Section 11(1)(a) of the FOIA allows an applicant to ask for a copy of the information in a form they prefer, for example hard copy, electronic,

audio tape or as in this case, by email as discussed in the Commissioner's guidance¹ at paragraph 15.

47. Section 11(3) of the FOIA states that where the public authority determines that it is not reasonably practicable to comply with a preference expressed by the requestor in making his request, the authority shall notify the applicant of the reasons for this determination.
48. The Commissioner has noted the final part of the complainant's request where she states "*I would like the above information provided to me via email where possible [email address redacted]. Where this is not possible please send it to me at the above address.*"
49. In response to part 6 of the request, the Trust stated that "*Information relating to this decision [to close the waiting list] is not available in the format requested, at the time of your request*".
50. In its submission to the Commissioner, the Trust has confirmed that it did comply with the requester's preferred means of communication which was email. It confirmed that all communications regarding the request were responded to using this format.
51. The Trust has offered its apologies for the misleading reference in its initial response to part 6 of the request which indicated that it did not hold the information in the format requested. It stated that a more accurate response would have been that it did not hold the information, which the Trust has stated in its internal review response.
52. The Trust has clarified that it wishes to confirm that it does not hold the information and this is because, following the introduction of a single point of access to services, all referrals were triaged through that process and signposted to the most appropriate service. If the referral met the criteria for access to secondary care services, appropriate signposting would take place, so appropriate services were offered to individuals requiring psychological therapy services (art therapy is not a service, it is a modality within the psychological therapy service).
53. Having considered the submission by the Trust, the Commissioner accepts that it incorrectly informed the complainant that the information

¹ <https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf>

requested in part 6 of the request was not available in the format requested. The Commissioner is satisfied that the Trust communicated the requested information it did hold in the preferred format of email, and has therefore complied with its obligation under section 11 of the FOIA.

Conclusion

54. In view of the above, the Commissioner has concluded that the Trust provided the complainant with the requested information in the preferred means of communication and therefore finds it complied with its obligation under section 11 of the FOIA with regards to all parts of the request.
55. The Commissioner has also concluded that the Trust provided the complainant with all the information that it holds within the scope of parts 2, 4 and 5 of the request, and therefore finds that it has complied with its obligations under section 1(1) and section 10(1) of the FOIA with regards to these parts of the request.
56. However, the Commissioner has concluded that the Trust held further information within the scope of parts 1, 3, and 6 of the request that it had not provided and therefore finds that the Trust has breached section 1(1)(b) and section 10(1) of the FOIA with regards to these parts of the request.
57. Furthermore the Commissioner has concluded that the Trust failed to state whether or not it held information within the scope of part 7 of the request and therefore finds that the Trust has not complied with its obligations under section 1(1)(a) and section 10(1) of the FOIA with regards to this part of the request.

Right of appeal

58. 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@hmcts.gsi.gov.uk

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

59. 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.
60. 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
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