

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2018

Public Authority: Norwich Clinical Commissioning Group

Address: Room 2012, City Hall
St Peters Street
Norwich NR2 1NH

Decision (including any steps ordered)

1. In a request to Norwich Clinical Commissioning Group ('the CCG') the complainant has requested information about mental health assessments for individuals detained by the police. The CCG has released information within the scope of part 1 of the request and confirmed it does not hold information within the scope of parts 2, 3 and 4.
2. The Commissioner's decision is that, on the balance of probabilities, the CCG has released all the relevant information it holds and holds no further information. The CCG has breached section 10(1) of the FOIA as it did not confirm it held relevant information and release it to the complainant within 20 working days of receiving her request.
3. The Commissioner does not require the CCG to take any steps to ensure compliance with the legislation.

Request and response

4. On 21 March 2017, the complainant wrote to the Trust and requested information in the following terms:

"Please avail using your 18 hours time all data around what the CCG hitherto agrees, that it commissioned by Contract a team of staff to liaise with police from 2010 onwards to at least 2014 by which such staff would attend from a local Site for mentally unwell, five police centres Wymondham HQ, Kings Lynn, Gt Yarmouth and Norwich court being four is understood and there " assess persons as police detainees for supposed mental health ". Please individualise the response facts across all five centres e.g. Total persons assessed, referred on, and not referred on etc as to all data & as the CCG will have copy of the contract it generated. Plus copy of any means by which the CCG accounted for this matter such as Updates on Progress, sums paid out for this service and by which " reporting back for CCG Review was managed" (not least as the contract was ended so the rationale for both its start up and ending will be stated on CCG Records)"

5. On 6 April 2017, the CCG wrote to the complainant and asked her to confirm that its understanding of her request was correct and the complainant confirmed that it was. The CCG summarised the request as follows:

[1] Please provide all data relating to a contract(s) commissioned by the CCG to provide a team of staff to liaise with the police between the periods 2010 to 2014, that would be responsible for attending and conducting a mental health assessment for individuals detained by the police.

[2] Please provide the following information in relation to the following centres:

*Wymondham Police HQ
Kings Lynn Police Station
Kings Lynn Magistrates Court
Great Yarmouth Police Station
Great Yarmouth and North Norfolk Magistrates Court
Norwich (Bethel Street) Police Station
Norwich Magistrates Court*

*for the periods 2010 to 2014: Total number of individuals assessed;
Total number of individuals referred to NSF; Total number of individuals not referred*

[3] Please provide copies of performance reports for this service including contract value for the periods 2010 to 2014

[4] Please provide details of the CCG (former PCT)'s rationale for implementing the contract and rationale for why the contract ceased.

6. On 4 May 2017, the CCG responded to the request. It provided general information about a particular contract with regards to part 1 and confirmed it does not hold information relevant to parts 2, 3 and 4. The CCG advised the complainant to contact Norfolk Constabulary with regards to parts 2 and 3.
7. The CCG provided an internal review on 7 August 2017. The review determined that the contract to which the CCG had referred in its initial response to part 1 concerned a Section 136 assessment suite, discussed below. This contract was previously in place with the Primary Care Trust (PCT) which preceded the CCG. The CCG explained that in April 2013 PCTs were formally dissolved and replaced by CCGs. The CCG confirmed that it does not hold the requested information for any period of time pre-dating the formal establishment of the CCG in 2013.
8. Through its review, the CCG had identified that it does hold some recorded information within the scope of part 1 – a contract service specification for the period 2013-2014 regarding a Section 136 assessment suite at Hellesdon Hospital. The CCG released this to the complainant. The Commissioner understands a Section 136 assessment suite to be a dedicated suite for receiving and assessing users brought to, in this case Hellesdon Hospital, under the auspices of Section 136 of the Mental Health Act. The CCG confirmed that the above contract was later re-commenced between the CCG and Norfolk & Suffolk NHS Foundation Trust (NSFT) on 1 June 2014.
9. The CCG acknowledged that its original response had breached section 1(1)(a) of the FOIA as the CCG had indicated to the complainant that it did not hold recorded information within the scope of part 1, when its review had identified that it does hold such information.
10. With regard to parts 2 and 3 and 4 of the request, the CCG maintained its position that it does not hold this information.

Scope of the case

11. The complainant contacted the Commissioner on 3 July 2017 to complain about the way her request for information had been handled.
12. The Commissioner's investigation has focussed on whether the CCG has complied with section 1(1) of the FOIA with regards to the four parts of the request and released to the complainant all the relevant information that it holds.

Reasons for decision

Section 1(1) – general right of access to recorded information

13. Section 1(1) of the FOIA says that 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 him or her if it is held.
14. In its submission to the Commissioner the CCG appeared to consider that the complainant's complaint concerned its response to parts 2, 3 and 4 only. The Commissioner confirmed to the CCG that the complaint also concerns the response to part 1. The complainant's first request concerns information the CCG may hold about a particular contract for the period 2010 to 2014. The CCG has confirmed that it did not exist as a formal entity until April 2013 and that it does not hold information predating this time. The CCG advised that it had released to the complainant the relevant information it holds, which relates to the contract that was re-commenced in June 2014, and confirmed on 18 January 2018 that this is all the relevant information it *does* hold.
15. The second, third and fourth parts of the complainant's request concern information associated with the above contract and the service to provide mental health assessments to those detained in police custody.
16. In its submission to the Commissioner, the CCG has confirmed that it has undertaken a further review of the request and is able to confirm once again that it does not hold this information. Furthermore, the CCG has explained that it has received and responded to the same request from the complainant (albeit with a variation in wording) on two separate occasions in the past; in 2013/14 and 2015/16, in addition to this current request of 2016/17.
17. With regard to part 2, the CCG has confirmed that it did not receive – and therefore does not hold - activity data of the type requested as this is not required for the commissioning of the contract.
18. With regard to part 3, the CCG has confirmed that, during the period concerned, it did not receive – and therefore does not hold - performance reports of the type requested as this was not required to commission the service. It says that the value/cost of the service is part of a wider block contract and cannot be separated out from the block contract to this level of detail. The CCG's position is that it therefore does not hold the requested information.
19. Section 1(1) of the FOIA concerns recorded information that a public authority holds. The FOIA does not oblige a public authority to create

new information to respond to a request, provide views, comments or opinions. Regarding part 4, the CCG says it cannot comment on why the contract was implemented by the PCT because the contract predates the existence of the CCG. As the contract is still running, having been re-commenced in June 2014, the CCG considers there is no rationale on why the contract has ceased. Its position is that it therefore does not hold recorded information on these points.

20. The CCG has confirmed that it does not have free access to information that pre-dates the CCG's establishment or that is held by third party organisations such as the Norfolk Constabulary or NSFT.
21. The Commissioner understands the CCG to mean that, if another organisation holds information within the request, that organisation is not holding it on behalf of the CCG. Therefore the CCG cannot be said to hold this information, if it is held elsewhere. If such information is held by another organisation, the CCG has confirmed that it does not decide how the information is retained, altered or processed; it does not decide who has access to the information and does not include in its budget any cost arising from holding the data.
22. The CCG has told the Commissioner that when the nature of the complainant's request had been confirmed, the CCG conducted the following searches with a view to answering the request.
23. The CCG's Mental Health Commissioning Team reviewed the contract commissioned on 1 June 2014 to establish whether it referenced the provision of a team of staff to liaise with the police, and which would be responsible for attending and conducting a Mental Health assessment for individuals detained by the police. The search revealed that the contract does not make the above specific reference but, in the interests of transparency, details were provided of the Section 136 assessment suite commissioned at the time.
24. In addition, the CCG carried out searches including, but not limited to, the following:
 - Service specification for the above contract – part of the service specification relates to the Mental Health outreach function for local courts
 - Any data held relating to Crisis Resolution and Home Treatment (CRHT) performance for 2013/14
 - Whether NSFT holds any data relating to CRHT activity

- A related FOI request from the complainant to which the CCG responded in 2015, confirming that it did not hold the requested information.
25. The CCG says that the searches referenced above were conducted on the electronic network drives of both the CCG and NEL Commissioning Support Unit. The latter may have held information on behalf of the CCG (for example, details of previous related FOI requests).
 26. All documentation in respect of a commissioned service and contents of a contract would have only been held on a shared network and within the original hardcopy signed contract. The CCG says that members of staff do not use personal computers in connection with the business of the CCG, and that information contained within emails would not have been the main source of information for the contents of a contract.
 27. With regards to search terms, the CCG says it relied on contract knowledge and historical information to try to address the queries the complainant has raised, rather than using specific search terms.
 28. The CCG has confirmed to the Commissioner that it did not, at any time, hold recorded information relevant to the request (which the Commissioner understands to refer to all four parts of the request) that it later deleted or destroyed. It has also confirmed that there is no business purpose for the CCG to hold the information (requested in parts 2, 3 and 4), or any statutory requirement to hold it.
 29. Finally, the CCG has told the Commissioner that there was a national mandate for all PCT legacy information, ie information predating the formal establishment of CCGs in April 2013, to be transferred to the Department of Health's Ministerial Correspondence and Public Enquiries Unit. On that basis, the CCG has told the Commissioner that it has no relevant policy on the retention/deletion of records of the type that have been requested, as the CCG would not have received this type of information. Since its formal establishment in 2013, the CCG says it has maintained its own Records Management Strategy and Policy and that this is aligned to the NHS Code of Practice.
 30. The Commissioner has considered the background to the request, the CCG's submission and all the circumstances of this case. She considers that the CCG has endeavoured to assist the complainant as far as possible with her request (which is a variation of a request submitted twice before) and that the searches and work that it has undertaken to address the complainant's request was adequate. The Commissioner's decision is that, on the balance of probabilities, the information it has released to the complainant is all the information it holds that is relevant to her request and the CCG has complied with section 1(1) of the FOIA.

Right of appeal

31. 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

32. 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.
33. 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

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