

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2019

Public Authority: NHS Liverpool Clinical Commissioning Group
Address: The Department
Lewis's Building
2 Renshaw Street
Liverpool
L1 2SA

Decision (including any steps ordered)

1. The complainant has requested information relating to the mental health services NHS Liverpool Clinical Commissioning Group (the CCG) has commissioned for Black and Minority Ethnic individuals/community since its inception. The CCG disclosed the recorded information it holds.
2. The complainant believes the CCG holds further recorded information and has breached the FOIA whilst handling his request. The Commissioner's decision is that on the balance of probabilities the CCG does not hold any further recorded information to that already disclosed. The Commissioner has however found the CCG in breach of section 10(1) and the FOIA in this case.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 30 January 2019, the complainant wrote to the CCG and requested information in the following terms:

"I wish to receive a copy of all recorded information you hold regarding what mental health services you have commissioned for Black & Minority Ethnic individuals/community since your inception"

5. The CCG responded on 13 February 2018. It informed the complainant that the only service it commissions is the Liverpool Community Development Service (LCDS) which comprises community development, issued-based advocacy and signposting to other services. It disclosed the service specification for LCDS to the complainant.
6. The complainant requested an internal review on 12 April 2018. He stated that the CCG had failed to provide a copy of all the recorded information it holds fitting the criteria of his request and failed to issue a valid refusal notice for the information it has not provided. The complainant advised that he believes the CCG holds further recorded information falling within the scope of his request.
7. The CCG wrote to the complainant on 3 May 2018. It stated that it had interpreted the request to be for mental health services it had exclusively commissioned for the Black & Minority Ethnic (BME) Community and confirmed that it would process the complainant's request for internal review in due course.
8. As the CCG had received no response, it wrote to the complainant again on 30 May 2018.
9. The complainant responded on 7 June 2018. He stated that he was not requesting any personal data that would mean breaching the Data Protection Act 1998 and in his opinion there is almost always some information which can be disclosed under the FOIA. The complainant advised the CCG that he had come across a previous response it had issued to another applicant, which referred to commissioned services which seem to fit the scope of his request. He also explained that he is requesting information on what mental health services the CCG has commissioned regarding the issues BME people experience that can impact of their mental health; issues that are much more prominent in the lives of individuals who are of BME ethnicity and/or are not shared by individual who are not of BME ethnicity. He provided the following examples:
 - "Racial; prejudice, discrimination, harassment, profiling. Institutional racism. Hearing/reading of Racist Incidents via TV, Internet, newspapers etc, family and friends.
 - Ethnic isolation; BME's living and or working in areas/environments where there are not many, if any, of the same/similar ethnicity. So a black person living in an area which is largely populated by non-black people.
 - Being of mixed-race heritage (one black and one white parent) can experience issues re; difficulties having consistent and

supportive social contacts and a sense of belonging, self harming in order to make themselves 'white' and were less likely to have frequent contact with family members. Hostile and rejecting family relationships. Isolation and experience of racism from both white and blackethnic groups. Poor self-esteem and identity confusion."

The complainant referred the CCG to the service specification it had previously disclosed and how this referred to the harmful impact of racism and discrimination. He also referred the CCG to another attachment he had sent which addressed the issues BME people experience.

10. The CCG carried out the internal review and notified the complainant of its findings on 11 July 2018. It provided the complainant with some additional information relating to the LCDS. It advised the complainant that although this is a specific BME community service commissioned by the CCG, it is worth emphasising that the mental health services it commissions are for all people and communities of Liverpool, inclusive of BME. The CCG explained to the complainant that specific interventions in respect of BME communities may be carried out by Mersey Care Foundation NHS Trust but these are not reported to the CCG. It therefore suggested that the complainant apply directly to the trust for further information.

Scope of the case

11. The complainant contacted the Commissioner on 19 September 2018 to complain about the way his request for information had been handled. He stated that the CCG's handling of his request is contrary to the FOIA and the Commissioner's own guidance. He alleges the CCG has failed within 20 working days to:
 - Confirm or deny whether it hold the information specified in his request.
 - Provide him with a copy of all the information he has requested which the CCG is likely to hold.
 - Provide a proper/valid refusal notice.

He stated that he is of the opinion that the CCG has failed to disclose to him all the information it holds fitting the criteria of his request.

12. The Commissioner considers the scope of her investigation to be to determine whether, on the balance of probabilities, the CCG holds any

further recorded information to that already disclosed. She will also consider whether there has been any procedural breaches of the FOIA.

Reasons for decision

Does the CCG hold any further recorded information?

13. The Commissioner asked the complainant to clarify exactly what information he required. She asked the complainant to confirm whether he requires the information for all mental health services *exclusively* commissioned for BME individuals since the CCG's inception or whether he requires the information for all commissioned mental health services which are *inclusive* of BME individuals but also include all other communities in Liverpool. She also asked the complainant to clarify the relevance of the former FOIA response dated July 2016 that was issued to another applicant.
14. The complainant responded. He stated that the former FOIA response dated July 2016 referred to a BME Community Mental Health contract, which he believes fits the scope of his request. He also referred the Commissioner to his response to the CCG dated 7 June 2018 and his explanation in this correspondence which explains the information he requires.
15. The Commissioner proceeded to make enquiries to the CCG. The Commissioner referred the CCG to the former FOIA response of July 2016 and asked it to explain what the BME Community Health contract is. It confirmed that this is the LCDS service specification it disclosed to the complainant on 13 February 2018. It clarified that this is not a separate or different service commissioned to the one it disclosed to the complainant on 13 February 2018.
16. The Commissioner also referred the CCG to four other contracts mentioned in this FOIA response (these being for Mersey Care NHS Trust, 5 Boroughs Partnership NHS Foundation Trust, Cheshire and Wirral Partnership NHS Foundation Trust and Lancashire Care NHS Foundation Trust) and asked the CCG to confirm whether these contracts fall within the scope of the complainant's request.
17. The CCG responded advising the Commissioner that these contracts do not fall within the scope of the complainant's request. This is because they are generic mental health contracts for the entire community and not exclusively for the BME community. It also confirmed that because they are generic contracts they do not specifically address the issues the complainant describes the BME community face, as outlined in his email to the CCG on 7 June 2018.

18. The Commissioner is therefore satisfied, having made the necessary enquiries to the CCG, that the former FOIA response from July 2016 does not reference any other commissioned services to the one already disclosed which would potentially fall within the scope of the complainant's request. The response's reference to a BME Community Health contract is the LCDS already disclosed to the complainant and the other mental health contracts listed are generic contracts for the entire community which do not specifically address or touch on the issues described in the complainant's email of 7 June 2018.
19. Noticing that the complainant also asked for all service provision commissioned by the CCG since its inception, the Commissioner asked the CCG to clarify whether there was any earlier contracts (any prior to the LCDS disclosed which was commissioned for the period 1 August 2015 to 31 July 2018) which may fall within the scope of the request. The CCG confirmed that it was set up in April 2013 and it commissioned the LCDS which commenced on 1 August 2015. Prior to 2015 any contracts in place were not commissioned by the CCG they were just transferred over to it when the Primary Care Trusts were abolished. Previous provision was commissioned by Liverpool City Council and Liverpool Primary Care Trust (BME Community Team).
20. As the complainant specifically asked for information on all mental health services commissioned by the CCG for BME individuals since its inception, the Commissioner is satisfied that any previous service specifications (prior to the LCDS which commenced on 1 August 2015) are not within the scope of the complainant's request. This is because the only service commissioned by the CCG since its inception to the date of the request is the LCDS and all other previous services were commissioned by Liverpool City Council and Liverpool Primary Care Trust.
21. For the above reasons, the Commissioner is satisfied that on the balance of probabilities the CCG does not hold any further recorded information falling within the scope of the complainant's request to that already provided.

Procedural matters

22. The Commissioner notes that the CCG disclosed further information to the complainant at the internal review stage. As this was information to which the complainant was entitled and it was not disclosed within 20 working days of the request the Commissioner has recorded a breach of 10(1) of the FOIA in this case.

Other matters

23. The section 45 code of practice recommends that public authorities carry out internal reviews within 20 working days of receipt. This can be extended to 40 working days if the request is particularly voluminous or complex.
24. In this case the Commissioner notes that the CCG wrote to the complainant on 2 May 2018 to set out exactly its interpretation of the request. It however stated at the end of that response that it would proceed with the internal review and notify the complainant of the outcome. It did not say it would postpone the internal review until the complainant had confirmed that he was happy with this interpretation although it did send a further email on 30 May 2018 chasing the complainant's response. Therefore, given that the request was not complex or voluminous, it was reasonable to expect that the internal review would have been completed within 20 working days of request.
25. The internal review was requested on 12 April 2018 yet it was not completed until 11 July 2018. The Commissioner would therefore like to take this opportunity to remind the CCG of the requirements of the section 45 code of practice and the need to carry out and complete internal reviews within the recommended timeframe.

Right of appeal

26. 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

27. 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.
28. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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