

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 April 2019

**Public Authority:** Wigan Borough Clinical Commissioning Group

**Address:** Wigan Life Centre  
College Avenue  
Wigan WN1 1NJ

#### **Decision (including any steps ordered)**

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1. In two requests, the complainant has requested information about the former Ashton, Leigh and Wigan Primary Care Trust's handling of personal data, and particular allegations that may have been made against a GP at Dicconson Group Practice. The position of Wigan Borough Clinical Commissioning Group ('the CCG') is that it holds none of the requested information.
2. The Commissioner's decision is as follows:
  - The CCG breached section 1(1)(a) of the FOIA with respect to request 1.2 as, on the balance of probabilities, it held relevant information at the time of the request on 22 August 2016. The Commissioner finds that this information is no longer held.
  - The CCG complied with section 1(1)(a) with regard to request 1.1 and request 2 as, on the balance of probabilities, the CCG does not hold any related information.
3. The Commissioner does not require the CCG to take any remedial steps.

## Background

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4. This case is associated with two earlier decisions that the Commissioner made in April 2018: FS50659774 and FS50661772. In those cases the Commissioner had found that the CCG was entitled to rely on section 14(1)(vexatious request) to refuse to comply with the two requests that are now the subject of the current decision.
5. The complainant appealed the decisions to the First Tier Tribunal (Information Rights) ('the FTT'). The FTT allowed the appeal – EA/2017/0110<sup>1</sup> – and instructed the CCG to either supply the information or to serve a refusal notice under section 17 indicating the grounds it relied on other than section 14(1).
6. Further background to the circumstances of these requests is detailed in the FTT's decision and the Commissioner does not intend to detail it here. The FTT had advised the CCG, NHS England and the former Department of Health (DH) to send the complainant a joint letter identifying (a) the organisation that holds the data relating to complaints he submitted to the former Ashton, Leigh and Wigan Primary Care Trust ('the PCT') in 2010 and (b) the organisation that is prepared to deal with each of the complainant's substantive complaints.
7. The FTT had concluded its decision by stating that "*The CCG should also consider carefully the wording of the request. It is clear from the papers...that the CCG has, since April 2013, shared personal data processed by the PCT during the handling of service users complaints with at least one other organisation. It seems likely therefore that if anyone holds the information in paragraph 2 of the August request, it is the CCG.*"
8. This case also has links to the Commissioner's decision in FS50760027<sup>2</sup>.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2227/Adedeji,%20Martin%20L.%20EA.2017.0110%20\(09.07.18\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2227/Adedeji,%20Martin%20L.%20EA.2017.0110%20(09.07.18).pdf)

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614135/fs50760027.pdf>

## Request and response

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### Request 1

9. On 22 August 2016 the complainant had written to the CCG and requested information in the following terms:
- 1. What recorded information do you hold which states what personal data processed from their [sic] 1st April 2009 by Ashton, Leigh and Wigan Primary Care Trust (ALWPCT) during their handling of service users complaints you hold.*
  - 2. What recorded information do you hold which states what personal data processed from the 1st April 2009 by ALWPCT during their handling of service user's complaints have you shared with other organisations since April 2013.*

### Request 2

10. On 5 September 2016 the complainant had written to the CCG and requested information in the following terms:
- I am requesting a copy of all recorded information you hold regarding allegations that any of the General Practitioner's at the Dicconson Group Practice racially abused a patient.*
11. As a result of EA/2017/0110, the CCG complied with the requests and issued the complainant with a response on 22 August 2018.
12. With regard to request 1.1, the CCG confirmed it does not hold this information. It said that during the period following close-down of the PCT on 31 March 2013 records were transferred to DH which subsequently identified NHS England as the data controller for PCT's complaint files.
13. With regard to request 1.2, the CCG confirmed that, other than the transfer referred to in 1.1, it had not shared any recorded information with other organisations since April 2013 regarding service users' complaints to the former PCT.
14. The CCG confirmed it holds no recorded information that addresses request 2.
15. In the circumstances the CCG did not carry out an internal review and the matter was passed to the Information Commissioner.

## Scope of the case

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16. The complainant contacted the Commissioner on 29 November 2018 to complain about the way his request for information had been handled. He has presented to the Commissioner a number of arguments to support his position that the CCG does hold information relevant to his requests. She has addressed these in her section 1 analysis.
17. The Commissioner's investigation has focussed on whether the CCG holds information that falls within the scope of the complainant's two requests and has complied with section 1(1) of the FOIA.

## Reasons for decision

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### **Section 1 – right of access to information held by public authorities**

18. Under section 1(1) of the FOIA 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 and is not exempt information.
19. The complainant told the Commissioner that, from information subsequently provided to him by DH, it appeared to him that at November 2015 the CCG had '*legal liability for service user personal data that was processed by Ashton, Leigh & Wigan Primary Care Trust in their handling of service user complaints that they received.*'
20. In addition to also noting the FTT's observation at paragraph 7, the complainant sent to the Commissioner various items of redacted correspondence from the CCG and from DH, from September and October 2013. This information was released to him by DH in response to a request he had submitted to DH. The correspondence broadly concerns the transfer and receipt of files and documents that concern the complainant. The complainant considers that this information is evidence that the CCG holds information falling within the scope of request 1.2 – ie that the CCG shared information regarding 'service users' complaints about the PCT with other organisations after April 2013.
21. The Commissioner forwarded this information to the CCG and invited it to consider it and to address the complainant's other arguments ie the point made by the FTT and the argument at paragraph 19.

22. The Commissioner had a telephone conversation with the CCG on 1 February 2019. The CCG explained that in 2013/2014 all electronic and hard copy records – associated with the former PCT - passed, first, to a temporary DH 'Legacy' Team before being finally passed to NHS England (NHSE). Its initial position therefore was that at the time of the requests in 2016 it did not hold information relevant to the complainant's two requests. It appeared to the CCG that the complainant had, unfortunately, received conflicting or incorrect information from DH and NHSE which may have suggested that the CCG holds particular information. The CCG said that the fact was, it does not.
23. The CCG provided a written submission to the Commissioner on 4 February 2019. It confirmed that it does not hold the information the complainant has requested. The CCG noted that, in his correspondence to the Commissioner, the complainant had not referred to a document which formed part of the CCG's response to the FTT decision; namely the letter to the complainant dated 8 August 2018 and signed by DH, NHSE and the CCG. The CCG said that in this letter it is unequivocally stated that NHSE is the data controller for the files that, ultimately, the complainant wishes to see and which concern complaints he submitted to the PCT in 2010. The CCG provided the Commissioner with a copy of that letter.
24. The CCG went on to note that information that the complainant had forwarded to the Commissioner, and which it presumed was available for the FTT hearing, all relate to a period in 2013. The CCG says that it should be understood that CCGs were established on 1 April 2013 and PCTs were abolished on 31st March 2013. The CCG acknowledges that the legacy arrangements for the PCT's data were being worked through for the remainder of 2013 and well into 2014. It provided the Commissioner with a copy of a letter which indicated when that period was finalised. This letter is dated 9 September 2014 and it provides a formal confirmation that DH's Records Transfer Project team had received electronic data – identified as 'Legacy' – for Ashton, Leigh and Wigan PCT.
25. The CCG has explained that during that time there were a number of exchanges with the DH's Legacy Team as it sought advice on how the close-down or transfer of PCT files was to be completed. The CCG notes that it should be understood that it was not the successor body to the PCT in this respect and during that time it was taking instructions from the DH's Legacy Team. The CCG has confirmed that at no time was it the data controller for PCT records. The CCG again acknowledged that the complainant was given contradictory information to that effect by the DH and NHSE in 2015 and 2016 (such as the statement at paragraph 19) but that the letter to the complainant dated 8 August 2018 finally confirms the actual position that was agreed.

26. The Commissioner has considered the complainant's requests. They are for:
- 1.1 "Any information the CCG holds that states what personal data the PCT processed from April 2009 during the PCT's handling of *service users* [Commissioner's italics] complaints."
  - 1.2 "Any information the CCG holds that states what personal data, processed by the PCT from April 2009 during the PCT's handling of *service user's* [Commissioner's italics] complaints, has the CCG shared with other organisations since April 2013."
  2. "Any information the CCG holds on allegations that any of the GPs at Dicconson Group Practice abused a patient."
27. For grammatical reasons, the Commissioner does not consider that it is clear, in requests 1.1 and 1.2, whether the complainant is referring to information associated with one particular service user's complaint(s), or to services users' complaints generally.
28. She has noted that in FS50760027, DH had asked the complainant to clarify his use of the term '*service users's*' and the complainant had confirmed that he was referring to himself. The requests to DH in FS50760027 concerned the PCT's investigation into 'a service user's' complaint about Dicconson Group Practice, and who was now the data controller for any information the PCT processed during its handling of 'service user's' complaints to the PCT from 1 April 2009 onwards.
29. The Commissioner considers it would have been reasonable to assume that in requests 1.1 and 1.2 the complainant was again referring to himself as the service user.
30. However the CCG has confirmed that it interpreted the requests as being for information associated with service users generally. The Commissioner considers this was also a reasonable interpretation to make, in the circumstances. The CCG has, however, acknowledged that the two requests are not clear and, with the benefit of hindsight, the CCG should have clarified with the complainant exactly what information he was seeking at the time it received the requests.
31. The matter of the disclosure of complaint files is discussed in FS50760027 and the Commissioner does not intend to repeat it here. In the current case, the CCG's position is that in August 2016 it did not hold relevant information that could be categorised as the complainant's own personal data (which, if it were held, would be handled under the data protection legislation and would be exempt under section 40(1) of

the FOIA) and it did not hold information that could **not** be categorised as the complainant's own personal data – such as the personal data of third persons - which would be covered by the FOIA. The CCG's position with regard to requests 1.1 and 1.2 is that it did not, and does not, hold any relevant information and, for completeness, the Commissioner has considered whether, on the balance of probabilities, the CCG holds any information at all falling within the scope of 1.1 and 1.2.

32. With regard to request 1.1, at September 2014 the process of transferring from the CCG to DH all the information the CCG held that was associated with the PCT was completed. The Commissioner therefore accepts that at 22 August 2016 – almost two years later - the CCG did not hold any information that stated what personal data the PCT had processed from April 2009, during its handling of complaints that had been submitted to the PCT, by the complainant or anyone else. The Commissioner has noted the FTT's instruction at paragraph 5 and comment at paragraph 7 but she finds that the CCG has complied with section 1(1)(a) of the FOIA with regard to request 1.1.
33. With regard to request 1.2, the CCG's position is that, at 22 August 2016, the only organisation with which it had shared recorded information regarding complaints to the PCT since April 2013 was DH. The Commissioner has not been presented with any evidence to suggest that this was not the case.
34. However, the email correspondence from September and October 2013 that the complainant provided to the Commissioner was released to him by DH but some of it was from the CCG to DH. This information would seem to fall broadly within the scope of request 1.2. Despite the complainant now already having this information (from DH), the Commissioner went back to the CCG to see if it also still holds its copies of this email correspondence.
35. The CCG has now told the Commissioner that in August 2016 it would have still held the emails to DH on its email system; in Inboxes and as Sent messages. However, the CCG says it has searched the system again and has found that the emails are no longer there; having, in the subsequent two and a half years, been managed in accordance with its usual archiving processes.
36. On the basis of what it has told her, the Commissioner finds that the CCG held copies of the emails the complainant received from DH at the time that the CCG received the complainant's request on 22 August 2016. As such, it breached section 1(1)(a) of the FOIA as it told the complainant that it did not hold any relevant information. However, given the passage of time and the CCG's information management procedures she finds that the CCG no longer holds this information. She

also finds that the CCG does not hold any other information about any other personal data of Ashton, Leigh and Wigan PCT service users the CCG may have shared with other organisations.

37. Furthermore, the Commissioner has reviewed the correspondence in question – the emails between DH and the CCG – and has noted that it concerns the complainant himself. As such, if it had been still held it would have been exempt from release under the FOIA under section 40(1) as it is the complainant's own personal data. The Commissioner also makes the observation that, if it had been held, the CCG could have also relied on section 21(1) of the FOIA as, since the complainant already has copies of this information from DH, the information is already reasonably accessible to him.
38. Finally, request 2 is for information on allegations that any of the GPs at Dicconson Group Practice abused a patient. This is a quite different subject matter from request 1.1 and 1.2. The CCG stated to the complainant and to the Commissioner that it does not hold any information relevant to request 2 but the explanations it provided in its submission and which are discussed above appeared to be more focussed on requests 1.1 and 1.2. The Commissioner therefore also went back to the CCG about request 2 and asked it to justify its position further.
39. The CCG confirmed that it does not hold any information falling within the scope of request 2. It says that any such records that the PCT might have held would have been transferred to the DH's Legacy Team in 2013/2014. The CCG has told the Commissioner that it searched through its email system and archived emails using the search term 'Dicconson.' It completed a similar search of its network hard drives which store its data files. The CCG has confirmed that none of these searches brought up any messages or files which were related to any such allegations.
40. On the basis of this further submission and the wider circumstances, the Commissioner is satisfied, on the balance of probabilities, that the CCG has complied with section 1(1)(a) of the FOIA with regard to request 2 and holds no relevant information.



## **Right of appeal**

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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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