Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2020

Public Authority: Lincolnshire Partnership NHS Foundation Trust
Address: Trust Headquarters
St George's
Long Leys Road
Lincoln
Lincolnshire
LN1 1FS

Decision (including any steps ordered)

1. The complainant has requested from Lincolnshire Partnership NHS Foundation Trust (the "Trust") information about aspects of its mental health treatment services. The Trust refused to provide the requested information, citing section 12(1) of the FOIA – that the cost of complying would exceed the appropriate limit for compliance.

2. The Commissioner's decision is that the Trust has correctly cited section 12(1) and provided advice and assistance to the complainant in line with its duty under section 16(1) of the FOIA.

3. The Commissioner does not require the Trust to take any further steps.

Request and response

4. On 16 April 2020 the complainant made a request for information under the FOIA which is reproduced in an annex at the end of this decision notice, due to its length.

5. The Trust wrote to the complainant on 29 April 2020 citing section 12 of the FOIA – that the cost of compliance would exceed the appropriate fees limit.

6. The complainant responded on the same day requesting an internal review.

7. The Trust provided an internal review on 30 June 2020 in which it maintained its original position that section 12(1) applied. However, the Trust did provide electronic links to its ECT policy, Performance Reports and patient leaflets.

Scope of the case

8. The complainant contacted the Commissioner on 1 July 2020 to complain about the way her request for information had been handled.

9. The Commissioner considers that the scope of this case is the Trust's citing of section 12(1) FOIA and whether it provided advice and assistance in line with its duty under section 16(1) FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12(1) of the FOIA states that:

> *"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

11. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public

authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the Trust. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- 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.

12. 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. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.[1]

The complainant's view

13. The complainant suggested that she would have understood if a delay had been requested by the Trust. She believes that the requested information would be useful at this time and that the information should already have been collected, in which case the cost would be minimal. She also stated that other Trusts had provided the information last year.

The Trust's view

14. The Trust explained that the initial request was shared with the responsible departments/services in order that they could consider their ability to determine, extract and, where appropriate, supply the

[1] http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf (para 12)

information. Senior managers from each respective department considered the request. Given the comprehensive knowledge of Trust systems and where and how information is held, the Trust determined, without the use of a sampling exercise, the quickest time estimate for gathering the requested information.

15. The questions were divided into the five groups set out in the request – 'ECT' (electroconvulsive therapy), 'Serious Incidents', 'Restraint', 'Seclusion' and 'Medication Errors'.

16. **'ECT'** – The Trust made individual calculations for each question which added up to approximately 230 hours and 10 minutes to provide the requested information (the calculation was in working days for which the Commissioner has assumed 8 hours per working day). Question 17 could not be calculated as it depended on the outcome from question 16. Question 21 could not be calculated without question 20 having been determined. To provide an example of the analysis given by the Trust for the larger amounts of time calculated, question three would involve one officer running a search on the Trust incident system to determine and collate all investigations relating to ECT. The Trust would require clarification for the exact timeframe. Depending on the number of investigation reports pulled, this would require another officer of the Trust to read through each individual report and make appropriate redactions in accordance with the Data Protection Act 2018 ("DPA"). The estimate was 5 working days for a one year timeframe for this question alone.

17. **'Serious incidents'** - The Trust was unable to make any calculations regarding this section without clarification from the complainant about the timeframe.

18. **'Restraint' -** The Trust made individual calculations for each question which added up to approximately 230 hours and 10 minutes to provide the requested information (the calculation was in working days for which the Commissioner has assumed 8 hours per working day). Question 17 could not be calculated as it depended on the outcome from question 16. Question 21 could not be calculated without question 20 having been determined. The Trust provided analysis for most of the questions. Question three, for example, would require one officer running a search on the Trust incident system to determine and collate all investigations relating to 'restraint'. Depending on the number of investigation reports pulled, this would require another officer of the Trust to read through each individual report and make appropriate redactions in accordance with the DPA. The estimate was 5 working days for a one year timeframe for this question alone.

19. **'Seclusion' -** The Trust made individual calculations for each question which added up to approximately 230 hours and 10 minutes to provide the requested information (the calculation was in working days for which the Commissioner has assumed 8 hours per working day). Question 17 depended on the outcome from question 16. Question 21 could not be calculated without question 20 having been determined. The Trust gave some more detailed examples. Question three would require one officer running a search on the Trust incident system to determine and collate all investigations relating to 'seclusion'. Depending on the number of investigation reports pulled, this would require another officer of the Trust to read through each individual report and make appropriate redactions in accordance with the DPA. The estimate was 5 working days for a one year timeframe for this question alone.

20. **'Medication errors'** - The Trust made individual calculations for each question which added up to approximately 230 hours and 10 minutes to provide the requested information (the calculation was in working days for which the Commissioner has assumed 8 hours per working day). Question 17 depended on the outcome from question 16. Question 21 could not be calculated without question 20 having been determined. The Trust provided some detail on certain questions. Question three would involve one officer running a search on the Trust incident system to determine and collate all investigations relating to 'medication errors'. Depending on the number of investigation reports pulled, this would require another officer of the Trust to read through each individual report and make appropriate redactions in accordance with the DPA. The estimate was 5 working days for a one year timeframe for this question alone.

The Commissioner's View

21. For unknown reasons, question 13 in each of the five sections of the request which related to patient deaths was omitted from the breakdown and the Trust has provided no calculation or comment. The Trust did not provide any analysis for the second section 'serious incidents' because the timeframe was not specified. The Commissioner notes that question four in that section does state "2019". However, it would appear that the Trust did not want to make the assumption that the complainant only wanted one year's data. This is the type of issue that would have benefited from clarification. It is also unclear whether redaction which was mentioned in the breakdown was included in the calculations. Section 12 does not allow the time spent making redactions

to be included.

22. Even allowing for the fact that some of the calculations are very broad, the length of the request and the breakdown of just one section has been calculated to be far beyond the fees limit. Any potential overestimate is academic as it makes little difference to the fact that the request takes the Trust so far beyond the appropriate limit. It may have been possible to provide a response to one section within the fees limit but, without clarification, the Trust would have had to select what it responded to. The Commissioner's view, as stated in her guidance, is that public authorities should avoid providing information for part of a request and refusing the rest under section 12 because it denies the requester the right to express a preference as to which part/parts of the request they may wish to receive. As set out later in this decision notice, the complainant clearly wanted the whole of the request responding to. The Commissioner therefore finds that section 12 was cited correctly and she does not require the Trust to take any further action.

Section 16 – duty to provide advice and assistance

23. Section 16 of the FOIA states:

> *"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*
>
> *(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

24. The Trust did not provide advice and assistance in its refusal notice, other than to point out that the request was too long and would take more than 18 hours to comply with. The review, however, provided links to some information which it believed would be helpful.

25. Subsequent to the Commissioner's investigation letter, the Trust contacted the complainant again summarising the position and seeking agreement to reduce the number of questions in order to provide information within the appropriate limit. The complainant responded but did not accept the Trust's view. Despite this, the Trust contacted her once more, reiterating its position that it could not provide the requested information within the 18 hour limit. It explained that some information is held on the clinical system and some only held in paper format. The Trust stressed that it had conducted a thorough time/cost

estimation before reaching its position to refuse. She was invited to reduce her questions so that at least some information could be provided. The Trust did not receive a response. The Commissioner considers therefore that the Trust has met its duty under section 16 as far as it is reasonable to do so.

Other matters

26. The Trust provided an internal review 43 working days after it had been requested by the complainant. The Commissioner recommends that public authorities carry out internal reviews within 20 working days and no longer than 40 working days.

Right of appeal

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

28. 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.

29. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Information request – 16 April 2020

"Please provide ECT information under the FOI act to the following questions : -
1. Please supply patient's information ECT leaflet.
2. Please supply patient ECT consent form.
3. Please supply any ECT reports/investigations
4. How many ECT in 2019?
5. What proportion of patients were men/women?
6. How old were they? 7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving ECT for the first time?
10. How many patients consented to ECT?
11. How many ECT complaints were investigated outside the NHS and CCG?
12. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?
13. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?
14. How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?
15. How many patients have suffered complications during and after ECT and what were those complications?
16. Have there been any formal complaints from patients/relatives about ECT?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after ECT?
21. If so what was the conclusion?
22. How does the Trust plan to prevent ECT in the future?

Please provide SERIOUS INCIDENT information under the FOI act to the following questions: -
1. Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.
2. Please supply patient SERIOUS INCIDENT REPORTS consent form.
3. Please supply any serious incident reports/investigations
4. How many SERIOUS INCIDENT REPORTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SERIOUS INCIDENT REPORTS for the first time?
10. How many patients consented to SERIOUS INCIDENT REPORTS?
11. How many SERIUOS INCIDENT REPORTS were investigated outside the NHS and CCG?

12. How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
13. How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
15. How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function? 19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SERIOUS INCIDENTS in the future?

Please provide restraints information under the FOI act to the following questions: -
1. Please supply RESTRAINTS patient's information leaflet.
2. Please supply patient RESTRAINTS consent form.
3. Please supply any Restraints/investigations
4. How many RESTRAINTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving RESTRAINTS for the first time?
10. How many patients consented to RESTRAINTS?
11. How many RESTRAINTS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
13. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)? 15. How many patients have suffered complications during and after RESTRAINTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about RESTRAINTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after RESTRAINTS?

21. If so what was the conclusion?
22. How does the Trust plan to reduce restraints in the future?

Please provide SECLUSION information under the FOI act to the following questions: -
1. Please supply patient's information SECLUSION leaflet.
2. Please supply patient SECLUSION consent form.
3. Please supply any SECLUSION reports/investigations
4. How many SECLUSION in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SECLUSION for the first time?
10. How many patients consented to SECLUSION? 11. How many SECLUSIONS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
13. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
14. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?
15. How many patients have suffered complications during and after SECLUSION and what were those complications?
16. Have there been any formal complaints from patients/relatives about SECLUSION?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SECLUSION?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SECLUSION in the future?

Please provide MEDICATION ERRORS information under the FOI act to the following questions: -
1. Please supply patient's information MEDICATION ERRORS leaflet.
2. Please supply patient MEDICATION ERRORS consent form.
3. Please supply any MEDICATION ERRORS reports/investigations
4. How many MEDICATION ERRORS in 2019?
5. What proportion of patients were men/women? 6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving MEDICATION ERRORS for the first time?
10. How many patients consented to MEDICATION ERRORS?
11. How many MEDICATION ERRORS S were investigated outside the NHS and CCG?

12. How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?
13. How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?
14. How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?
15. How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?
16. Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after MEDICATION ERRORS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent MEDICATION ERRORS in the future"