

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2022

Public Authority: Nottingham University Hospitals NHS Trust

Address: City Hospital Campus
Hucknall Road
Nottingham NG5 1PB

Decision (including any steps ordered)

1. The complainant has requested information about its vascular services from Nottingham University Hospitals NHS Trust ('the Trust'). The Trust released information, but the complainant considers that it holds further information relevant to two parts of their request.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust has disclosed all the information it holds that is within scope of Q1 and Q4 of the complainant's request and has complied with section 1(1) of FOIA.
 - The Trust breached section 10(1) as it did not comply with section 1(1) within 20 working days.
3. The Commissioner does not require the Trust to take any remedial steps.

Background and context

4. The Trust has provided the following background and context.
5. The Quality Surveillance Information System (QSIS) is a national system that NHS England operates which facilitates the mandatory collection of data about the quality of services from providers of Specialised Services.

These include Arterial Centres (Vascular Network Hubs) which are delivering care under the 170004/S Specialised Vascular Services (Adults) Service Specification.

6. The Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process states:

“When completing the self-declaration, all data fields will require an entry against them. Non-completion of any data entry fields will prevent the self-declaration form from being submitted. Providers are expected to comment on reasons for answering negatively or not applicable against an indicator. No additional documentary evidence is required at the point of self-declaration.”

7. As outlined above, the QGIS system only allows the entry of Yes, No and Not Applicable in response to the questions being asked. Comments are mandated where No, or Not Applicable responses have been provided. Comments are optional for Yes responses. The system does not have a facility to upload documentation to it. This was corroborated by NHS England in its response to a request the complainant submitted to it, which stated:

“Trusts are not required to submit the documentation described as part of the self-assessment process, only to say whether they have it. This documentation would be submitted as part of a peer review process. Peer review of vascular services has not yet taken place.”

Request and response

8. On 7 January 2021 the complainant wrote to the Trust and requested information in the following terms:

“With regards to the Main Arterial centre within your group of hospitals I request electronic copies of the following information.

1. The 2019/2020 annual self-assessment that was submitted via the Quality Surveillance Programme relating to the Specialised Vascular Services (Adult) Specification 170004/S.
2. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-001 - "There is an agreement outlining the network configuration", then I request copies of the evidence documents: operational policy (or part of) that supported this positive declaration.
3. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-017 - "There are patient

pathways in place", then I request copies of the evidence documents: operational policy (or part of) including pathways that supported this positive declaration.

In order to reduce the scope of this part of the request, I include part of the indicator description that highlights my main interest:

Descriptor:

The AC should agree with the relevant service providers and relevant commissioners, network wide patient pathways

for: Peripheral Arterial Disease including:

- The management of acute limb ischaemia.

The pathway should include the following specifics;

- that emergency admissions should be reviewed by a consultant vascular surgeon within 12 hours

All the pathways should specify:

- the specific responsibilities of the involved providers, including the AC, the

NAVCs and other providers;

- the indications for referral between providers (compatible with the levels of care model in the introduction to these indicators);

- the arrangements for transfer between providers for emergency surgery or interventions;

- any indications for case discussion at the weekly network MDT meeting;

- the relative responsibilities of the endovascular and open surgical specialists;

- referral pathways to other relevant specialties;

- the essential communications between professionals—what information should pass between which providers by which timelines;

- arrangements for patients who are turned down for vascular intervention and require palliative admission;

- locally relevant items including named providers and contact points.

Notes:

Pathways specify how the different Centres and groups of professionals should interact at defined stages of the patient journey, for diagnosis, assessment, management or follow up, as relevant.

4. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-021 - "There are clinical

guidelines in place", then I request copies of the evidence documents: operational policy (or part of) including guidelines that supported this positive declaration.

In order to reduce the scope of this part of the request, I include part of the indicator description that highlights my main interest:

Descriptor:

The AC should agree with relevant service providers and relevant commissioners, network wide clinical guidelines for patients with:

- peripheral arterial disease including amputation;
- vascular injury

The guidelines should cover diagnosis, assessment, treatment and follow up.

Notes:

Clinical guidelines cover guidelines, protocols, 'SOPs' which describe how to manage a patient in a given clinical situation or specified point on the pathway. Examples include assessment checklists, surgical procedures, treatment protocols, key investigations at follow-up visits etc.

The Centre may wish to agree additional clinical guidelines to those specified in the indicators.

Network guidelines should be compliant with current national guidelines where relevant."

9. The Trust responded on 3 June 2021. It released information within scope of the four questions. With regard to Q1, the Trust disclosed a pdf document titled 'NUH Self Declaration 2019-20'. With regard to Q4, the Trust provided a document titled: '2019/20 Vascular Service SLA – NUH to SFH – KMH and Newark Hospitals'.
10. The complainant requested an internal review on 3 June 2021. They confirmed that they were satisfied with the Trust's response to Q2 but dissatisfied with its response to the remaining three questions.
11. With regard to Q1, the complainant said they have copies of various "submissions" from other Trusts and that these contain indicator descriptors and note evidence documents. The complainant suggested the Trust double check the information it had provided and either provide a complete self-assessment and/or state any exemptions it had applied or explain why the indicator/notes/sections/mention of evidence documents were missing from its submission. The complainant noted

that they had sent the Trust a link to the submission they had received from Royal Derby Hospital.

12. With regard to Q3, the complainant said they would reduce the scope of this question, and they highlighted the part of the indicator description that was their main interest.
13. With regard to Q4, the complainant noted that the Trust had provided the same information it had provided for Q3, and they asked for the requested clinical guidelines and standard operating procedures.
14. The Trust provided an internal review on 10 September 2021. Addressing Q1, the Trust confirmed it had compared its "submission" with that provided by other Trusts – Royal Derby Hospital and Manchester University NHS Foundation Trust – Wythenshawe Hospital. The Trust noted and explained the differences between the submissions and confirmed it had provided the complainant with a complete self-assessment document and had not applied any exemptions.
15. The Trust released further information within scope of Q3. With regard to Q4, the Trust advised it was still awaiting information and would update the complainant in due course.
16. The Trust acknowledged its response times had not met FOIA's requirements.
17. On 12 September 2021, the complainant confirmed to the Trust that they were now content with its response to Q3. However, following the Trust's explanation of the difference between submissions in relation to Q1, the complainant stated that unless it was possible for a member of staff to log into the Quality Surveillance Portal to obtain the self-assessment inclusive of the quality indicator descriptors, they considered that Q1 remained outstanding. The complainant explained that including the indicator descriptors would make it easier for them to compare submissions with other Trusts whose downloaded submission does include the descriptors. The complainant acknowledged that the information they requested in Q4 was still being considered by the Surgery Division.

Scope of the case

18. The complainant contacted the Commissioner on 31 July 2021 to complain about the way their request for information had been handled.
19. In the complainant's correspondence to the Trust they have stated that they are content with the Trust's responses to Q2 and Q3 of the request.

The Commissioner's investigation has therefore focussed on whether the Trust has disclosed all the information it holds that is relevant to Q1 and Q4, and the timeliness of its response.

Reasons for decision

20. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
21. Under section 10(1), a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
22. In Q1, the complainant has requested

"The 2019/2020 annual self-assessment that was submitted via the Quality Surveillance Programme relating to the Specialised Vascular Services (Adult) Specification 170004/S."
23. The Trust released a copy of its '2019-20 QSI Self Declaration' which, it has told the Commissioner, it downloaded from NHS England's QSI database. In its internal review the Trust confirmed it had disclosed the complete self-assessment.
24. In its submission to the Commissioner, the Trust says it has compared the Self-Declaration it made and the submission that the Royal Derby Hospital had made. The complainant had provided the Trust with a copy of that submission as an example of what they would have expected to receive from the Trust in response to Q1.
25. The Trust has gone on to say that the following consideration only relates to the NHS England QSI System Help text (ie indicator descriptors). These form part of the formatting of some Self Declarations when downloaded from the NHS England QSI System. The Trust confirmed that it held the remaining elements of the Self Declaration relating to Q1, ie the Yes/No/Not Applicable responses, and Comments where applicable, and these were provided to the complainant on 3 June 2021.
26. Although, says the Trust, there was initial confusion about Q1, once it became clear what information was being requested, the information was located and downloaded from the NHS England QSI System on 2 June 2021. The Trust provided it to the complainant on 3 June 2021.

27. Once it had disclosed the information, the Trust notes that the complainant commented that all of the other Self Declarations provided to them contained “indicator descriptors and clearly noted evidence documents”. The complainant questioned whether the Trust had removed that information from the Self Declaration it had provided. The complainant had provided a link to a Self-Declaration provided by the Royal Derby Hospital. This included grey shaded areas beneath each indicator that contained a block of text entitled “Indicator description”. This section contained the following sub-sections, together with associated descriptive text:

- Descriptor
- Notes
- Evidence Documents; and
- Data Source

28. The text that the complainant believed the Trust had removed from its form was the text that was included in the grey area of the Royal Derby Hospital Self Declaration form.

29. The Trust says that the Self Declaration form it downloaded from QGIS did not contain the text which had been included in the grey area of the Royal Derby form.

30. The Trust says it has reviewed examples of the information that other Trusts provided to the complainant. A number of other Trusts have also been identified as providing copies of Self Declaration documents which include the indicator description. An analysis of these submissions demonstrates that in each case the specific text applicable to each indicator is exactly the same across all providers who have submitted or downloaded the Declaration in that format. The Trust has provided the Commissioner with examples.

31. The Trust has also provided the Commissioner with examples of Self Declaration documents that other Trusts provided to the complainant, in addition to the Trust’s submission, where the formatting did **not** include the indicator description that the QGIS Help system provided.

32. The Trust says that in its internal review of its response to Q1, it clarified for the complainant that the only information which is entered onto the QGIS System are the Yes, No or Not Applicable responses for each of the indicators included within the Declaration.

33. Where the answer is No or Not Applicable, entering a Comment is required. This is in accordance with the SC SOP AA Quality Assurance Process. The Trust also advised the complainant that the text displayed within the grey area forms part of the QGIS Help system and is not

entered onto the system by individual providers as part of their submission.

34. The complainant had subsequently asked the Trust to download a further copy of the Self Declaration from the QGIS system, including the text provided by the QGIS Help system. The Trust believes that it does not hold this information as it forms part of the functionality of the QGIS system. It is not information that the Trust has inputted as part of the Self Declaration.
35. The Trust says it has already confirmed it holds the information it entered onto the QGIS System, including Yes, No and Not Applicable together with associated Comments, and it provided this to the complainant on 3 June 2021.
36. The Trust has referred to the Commissioner's published guidance: 'Determining whether we hold information'. In that guidance it states:

"...you may be one of a number of public authorities contributing information to a central electronic repository. You can access each other's information, but on a read only basis. For the purposes of FOIA and the EIR, you would only hold the information that you had put into the repository yourself."
37. The Trust has also referred to the Information Tribunal's decision in EA/2005/0031. The Tribunal differentiated between the information that the public authority had selected for use and other information held within a database, an online legal library in that case. The Tribunal found that information selected, downloaded and saved to the public authority's own computer was held, as was the information printed off from the database. However, the remainder of the information on the database was not held by the public authority, and that would be the case in most instances.
38. In the case of the Self Declaration being considered here, the format in which the Trust says it downloaded it contained all of the responses it provided to the NHS England QGIS System. But it did not include the indicator descriptors provided by the QGIS Help System functionality. The indicator descriptors which are described within the QGIS Help system form part of the functionality of the system. They do not form any part of the information the Trust inputted as part of the Self-Declaration Process. As such the Trust confirmed its view that it does not hold the indicator descriptors.
39. With regard to the complainant's request for the Trust to log onto the NHS England QGIS System in order to download a further copy of the Self Declaration with the indicator descriptor text included, the Trust

believes that this would result in it creating information in order to satisfy an information request. It has noted the Commissioner's guidance above states that if a public authority does not hold a particular piece of information that someone has asked for, it does not have to create it.

40. The Trust's submission concludes by detailing the searches it undertook for information relevant to both this question and Q4.
41. The Commissioner considers that the Trust has now devoted enough time to addressing Q1 of the complainant's request and has addressed it fully. The complainant requested the Trust's 2019/2020 QSI Self-Declaration, and the Trust has provided them with a copy of the relevant information that it had downloaded from NHS England's database. In view of the guidance and Tribunal decision that the Trust has referred to, the Commissioner questions whether the Trust was required even to do that. It could be argued that, unless the Trust already had a copy of the Self-Declaration document saved to its own computers, it did not hold a copy of that document; NHS England held it on its own database and the Trust had to download a copy to comply with the request.
42. However, the Trust has now provided the complainant with a copy of that document. Other Trusts may have provided the complainant with their self-assessment documents in another format, which included additional information drawn from the QSI system itself. But the Commissioner agrees with the Trust that it does not hold this additional information – indicator descriptors – as they are part of the functionality of NHS England's QSI system's functionality, and it is therefore not obliged to provide this information.
43. The Commissioner has decided that the Trust has complied with section 1(1) of FOIA with regard to Q1 of the request. This decision is in line with his decision in a separate, but somewhat similar, complaint that the complainant had submitted about another Trust – IC-109910-W9H2¹. The Commissioner has gone on to consider the Trust's response to Q4.
44. In Q4, the complainant requested the clinical guidelines referred to if the Trust had answered in the affirmative to the QSI statement: "There are clinical guidelines in place". The Trust had disclosed a particular Service Level Agreement document. It had advised the complainant that it was

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/4019343/ic-109910-w9h2.pdf>

considering whether it held any other relevant information, but the Trust did not go on to confirm whether or not it had identified any.

45. In its submission the Trust has said that at the time of its response to the request it had undertaken a number of searches to determine whether it held the clinical guidelines requested in Q4. However, at that point in time it was unable to locate the specific guidelines being requested.
46. The Trust says it conducted further searches as part of its internal review. As a result of this process the Surgery Division Specialty General Manager advised that the Trust does not have pathways for every type of case as it would be unreasonable to have them. They added that they have local knowledge for pathways. With regard to Q4, the General Manager advised that clinical guidelines are nationally set by the Vascular Society and other relevant organisations and, as such, are not held by the Trust. The Trust accesses the information in order to update its knowledge of specific aspects of vascular care provision. However, as it does not submit any information to any repository the Trust confirmed that it does not consider it can be said to hold that information itself.
47. As in the Commissioner's previous decision in IC-109910-W9H2 which also considered the matter of similar clinical guidelines, the Commissioner is satisfied that the Trust has disclosed all the information it holds that is relevant to Q4. As well as drawing on the clinical judgement of its staff, the Commissioner accepts that the Trust's treatment of vascular conditions draws on national and regional guidelines and pathways – it does not hold guidelines and pathways that are local only to the Trust. The Commissioner has therefore decided that the Trust's response to Q4 also complied with section 1(1) of FOIA.
48. However, the complainant submitted their request on 7 January 2021 and the Trust did not provide a response to the request until 3 June 2021. This was a significant breach of section 10(1) of FOIA.

Right of appeal

49. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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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