

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2022

Public Authority: Sussex Community NHS Foundation Trust
Address: Brighton General Hospital
Elm Grove
Brighton
BN2 3EW

Decision (including any steps ordered)

1. The complainant has requested information about the 2021 flu vaccination. The final position of Sussex Community NHS Foundation Trust ('the Trust') is that it has released the relevant information it holds and does not hold any further relevant information.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust does not hold any further information within scope of the complainant's requests and has complied with section 1(1) of FOIA.
3. The Commissioner does not require the Trust to take any remedial steps.

Request and response

4. On 11 October 2021 the complainant requested information of the following description:

"In order to have fully informed consent, and by way of a Freedom Of Information Act Request, can you please supply a full list of all the contents of the Flu vaccination for this year's Flu Vaccination - including:

The types of Flu's being included this year, and
A full and detailed list of all the adjuvants being utilised, and
A full and detailed list of any and all other biological and non biological contents being included,
Please include any contents identified as 'commercial in confidence' - as lack of full transparency contravenes the Nuremburg Medical Code.

Can you also supply an analysis of the contents, by an independent [sic] technical laboratory to confirm that the contents of the Vaccines are as detailed.

If not can you supply a sample for verification by an independent [sic] laboratory.

Can you also supply details of the Company that is manufacturing this year's Vaccinations,

Can you also supply the Company's record for adverse effects including death for previous vaccinations of a similar nature (including if necessary Covid vaccinations),

Can you also indicate if this same Flu Vaccination is being given to the elderly in the same or a different manner (spray or injection), and if different what is the difference?

Can you also indicate (for the elderly) what is the extent of deaths caused by the flu vaccination in the four weeks following the flu injection, above the monthly norm?

Can you also indicate if the Flu Vaccination is including a 'Covid' element for either young or elderly?

Can you also indicate if the same vaccine is to be given to children and elderly across the whole of the UK?

Grateful in anticipation for the information above, which is essential to understand before fully informed consent can be enabled."

5. On 9 November 2021 the Trust responded. It directed the complainant to where information within scope of each part of their request is already published [by other bodies] and directly addressed one of their questions.

6. The complainant requested an internal review on 13 November 2021 and submitted a further request as follows:

"Please therefore answer the specific questions reiterated below, as previously [sic] asked, as well as an additional amended question.

Please provide:

1. A full and detailed list of all the adjuvants being utilised in this season's children's flu sprays.

2. A full and detailed list of any and all other biological and non biological contents being included - and if none say None.

3. Please specifically confirm that there are no additional biological agents that might result in the proliferation of diseases, such as Marburg or Ebola, or the use of parasites and bacteria to spread [sic] other diseases, and if none, say None.

Failure to supply this particular information will be taken as non disclosure, implying the inability to enable Parents to have fully informed consent.

Failure to supply this will be widely circulated to parents across Sussex, prior to the December roll out of Child Flu spray vaccination [sic].

Please additionally identify your team by name to enable future consideration of consequences resulting from parts of or all of the above, if they are found to be in error."

7. The Trust provided an internal review on 25 November 2021. It confirmed that it does not hold the information the complainant has requested and advised them to contact Public Health England (now the UK Health Security Agency). The Trust provided the complainant with a copy of the flu consent letter it sends to parents and with a link to its website where related guidance is published.

Scope of the case

8. The complainant contacted the Commissioner on 2 December 2021 to complain about the way their requests for information had been handled.
9. The complainant did not accept the Commissioner's initial assessment of their complaint; that the Trust had responded to their request(s) appropriately. The Commissioner's formal investigation has therefore considered whether, on the balance of probabilities, the Trust holds the information the complainant has requested.

Reasons for decision

10. Under section(1) of FOIA anyone who requests recorded 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.

11. In its submission to the Commissioner the Trust has advised that its FOI team has reviewed the Trust's handling of both the original request and the further request included in the complainant's request for a review. The FOI team has also re-engaged with the following key stakeholders: Immunisation Team, Deputy Area Director for Immunisation Service, Medicines Management, Chief Pharmacist, and Senior Information Risk Owner. The Immunisation Team and Medicines Management Team has confirmed that the Trust holds no other relevant information, other than what it has previously provided.
12. The Trust has explained that the flu vaccination is a national programme led by Public Health England [now the UK Health Security Agency], and that the Trust is not responsible for delivering the programme in Sussex. Nor is the Trust responsible for manufacturing the vaccines or developing national guidance. The Trust has confirmed that its role in delivering the national programme is to administer the vaccine to school aged children. As part of this, it collects consent and signposts to existing national guidance. For both requests, the Trust says it provided links to where the information could be found for each individual question.
13. The Trust has told the Commissioner that, on reconsideration, it considers that the terminology it used in its response was incorrect. Rather than saying it did not hold information, the Trust considers that it should have applied section 21 of FOIA, which concerns information that is exempt because it is reasonably accessible to an applicant by other means. This is because, the Trust says, it had access to the links and online resources as part of the delivery of its immunisation service.

The Commissioner's conclusion

14. The Commissioner has noted the Trust's position and the internal discussions it has had as to whether it holds any information that is relevant to the complainant's request. He accepts that the flu vaccination programme is a national programme and that the Trust would not hold the specific, largely technical information the complainant has requested. As such, the Trust has complied with section 1(1) of FOIA.

Other matters

15. The Trust has discussed section 21 in its submission. Because the Trust does not hold the requested information itself, it cannot apply section 21 to it. But relevant information is held by other bodies and, in line with the duty to provide advice and assistance to applicants under section 16(1) of FOIA, the Trust provided the complainant with links to where those bodies publish that information.
16. The Trust could have applied section 21 to the guidance information it publishes on its own website but the complainant did not request this specific information. The Trust appears to have sent them that link in line with the above section 16 duty.
17. Finally, in correspondence to the Commissioner dated 19 August 2022, and with reference to their concerns about vaccinations, the complainant indicated that they were serving the Commissioner with a 'Notice of Liability for Genocide'. Such language is completely unacceptable. Under section 50(2)(c) of FOIA, which concerns frivolous and vexatious requests, the Commissioner would consider refusing to accept future requests for a decision from the complainant if they use the same or similar language.

Right of appeal

18. 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

19. 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.
20. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF