

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2022

Public Authority: Mid & South Essex Integrated Care Board
Address: Phoenix House
Christopher Martin Road
Basildon
SS14 3EZ

Decision (including any steps ordered)

1. The complainant has requested information from Mid Essex Clinical Commissioning Group (the CCG), which is now Mid & South Essex Integrated Care Board, about patient choice in mental health secondary care providers. The CCG stated that it does not hold information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the CCG is correct when it says that it does not hold the requested information. However, the CCG breached section 10(1) of FOIA as it failed to provide a response to the complainant within the statutory time limit.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 21 March 2021, the complainant wrote to the CCG and requested information in the following terms:
"Could I please have separate figures for all the Essex CCG showing how many patients have been able to access choice in secondary care mental health provider beyond Eput or their forerunner

organisations/your service provider partners, between April 2014 to present?

Could you also break the figures down into years, so we can see when people have been able to access choice in the years following 2014.”

5. The CCG responded on 29 April 2021. It stated that it held no information within the scope of the request.
6. Following an internal review the CCG wrote to the complainant on 6 April 2022. The CCG upheld its original response to the request.

Scope of the case

7. The complainant contacted the Commissioner on 16 March 2022 to complain about the way their request for information had been handled, at which point the CCG had not provided its internal review response.
8. After the CCG provided the internal review the complainant remained dissatisfied, specifically they felt that the CCG had not answered their concerns.
9. The Commissioner considers the scope of his investigation to be to determine whether the CCG has met its obligations under section 1 of FOIA.

Reasons for decision

10. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
11. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request; this does not extend to the right to ask questions, explanations, clarification of information or debate the contents of information unless the response to those questions, requests for explanation or clarification is already held by the public authority in recorded form.
12. During the Commissioner’s investigation, the CCG explained that it does not routinely collect data regarding all mental health secondary care

referrals, and that patients would generally raise their choice of care provider with their GP's at the point of referral. The CCG further explained that the only information it could potentially hold regarding patient choice of mental health secondary care provider is for those referrals which are sent to it as Individual Funding Requests because they are for non-commissioned services.

13. The CCG stated that if any information was held it would be with the Individual Funding Requests team, which had searched its databases for referrals relating to patient choice in mental health secondary care provider, with the searches returning no results. The Commissioner is satisfied that the CCG conducted appropriate and proportionate searches to determine whether or not it held any information within the scope of the request.
14. In their request for internal review the complainant raised concerns such as, "I am still waiting to find out why the Essex CCG's are not allowing Essex NHS patients their Legal Right to choose the mental health service provider of their choice" and "Can the CCG remove this very misleading information "in most cases" regarding mental health from its website". Whilst the Commissioner understands that these are valid concerns of the complainant, he is satisfied that these concerns are seeking explanations or actions to be taken, rather than disclosure of recorded information held by the public authority. Therefore, they are outside of the scope of FOIA and beyond what the Commissioner has the authority to investigate.
15. The Commissioner concludes that, on the balance of probabilities, the CCG is correct when it says that it holds no information within the scope of the request. It has complied with section 1 of FOIA, and does not need to take any further steps on this matter.

Right of appeal

16. 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

17. 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.
18. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF