

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2022

Public Authority: Lancashire and South Cumbria NHS Foundation Trust

Address: Sceptre Point
Sceptre Way
Walton Summit
Preston
PR5 6AW

Decision (including any steps ordered)

1. Through a 10 part request, the complainant has requested information about a review project associated with the work of associate hospital managers. Lancashire and South Cumbria NHS Foundation Trust ('the Trust') disclosed some relevant information. It originally applied section 36 of FOIA (prejudice to the effective conduct of public affairs) to one part of the request and refused to comply with the remaining part under section 12 (cost exceeds appropriate limit). The Trust subsequently withdrew its reliance on those exemptions.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust has disclosed all the relevant, recorded information it holds that falls within scope of parts 1, 2, 5, 6, 7, 8, 9 and 10 of the request and has complied with section 1(1) of FOIA.
 - The Trust communicated some of the requested information outside of the 20 working day requirement and therefore breached section 10(1).
3. The Commissioner does not require the Trust to take any corrective steps.

Request and response

4. On 4 May 2021 the complainant wrote to the Trust and requested information of the following description:

"I understand LSCFT engaged Verita Consultancy Ltd, Head Office at City Road London EC1V 2PY to undertake a review and advisory project for LSCFT into the work of Associate Hospital Managers, (AHM's) under the Mental Health Act. This occurred towards the end of 2020. The project has included the interview of a number of AHM's during 2021.

1) Please provide me with a) the procurement, tendering or other documentation used to invite Verita to bid for this work and b) indicate whether and how this was a competitive process and under what procurement authority it was made.

2) If not included in the response to 1), please provide all the documentation showing all dates or indicative dates relevant to the tendering process and the expected timescales for the project or for any identified phases or other arrangements for the delivery of the project.

3) If not included in the response to 1) please provide documentation identifying which senior and/or executive members of LSCFT commissioned and approved a) the decision to tender for the project and b) the project itself, if different.

4) Please provide me with the anticipated value/cost to LSCFT of this project a) as tendered/invited, and b) at inception if different.

5) Please provide me with the anticipated timescale of this project or phases of this project a) as tendered/invited, and b) at inception if different, c) as of this date 4th May 2021.

6) Please provide me with the total costs charged by Verita to LSCFT for this project, a) to 31st March 2021, or end of FY 2020/21, and b) to 30th April 2021, if available, or, if these figures are not available c) why they are not available and the monthly charges or anticipated charges incurred and to what date. Such information to be broken down by any detailed categorisation of charges required by LSCFT.

7) Please provide me with a copy of any unpublished or a reference to any published documentation providing the rationale for this specific review of the operations of AHM's by Verita for LSCFT including any reference to any inspection or analysis of the functioning or effectiveness of AHM's in LSCFT or elsewhere, justifying this project.

8) Please provide me with a copy of any documentation approved by any executive member(s) of LSCFT or other member(s) of LSCFT approving a) this project and b) the expenditure for this project and c) any changes to the terms or timing of this project. Please ensure the relevant members are identifiable by name and post held.

9) Please provide me with copies of any interim or final reports prepared by Verita for LSCFT arising from this project.

10) please provide me with copies of the briefing papers provided to Verita by LSCFT at any time in order to guide, inform, direct or otherwise ensure Verita addresses the issues that the contract is expected to deliver.

11) Where any information forming the response to in 1-10 above is unavailable, please indicate to the best degree what that information is described as and why it is not available and when/whether it will be made available in the future. Where such information is being withheld, please provide all other information relevant to 1-10 so that this can be considered pending the release of any withheld documentation.”

5. On 7 June re 2021 the Trust responded, as follows:

- Q1a) – no information held as there was no procurement or tendering process. Q1b) addressed.
- Q2 – no information held as there was no tendering process
- Q3 – names of individuals involved in commissioning the project provided
- Q4a) and b) – information provided
- Q5a) – information provided
- Q6a) – information provided. Q6b) and 6c) addressed.
- Q7 – information withheld under section 36 of FOIA
- Q8 – question addressed
- Q9 – inappropriate to share information as review still underway; relevant information will be shared in the future
- Q10 – a terms of reference document provided

6. The complainant wrote to the Trust on 7 June 2021. They first advised that the terms of reference document had not been attached to the

Trust's email. Their remaining points were as follows:

- Q1a) – Trust to release other documentation used to invite Verita to bid for the work, and 1b) under “what procurement authority it was made”

The complainant advised that they considered their request included correspondence between the Trust and Verita

- Q2 – the complainant confirmed that they are seeking particular dates, information which may also fall within scope of Q1
- Q5 – Trust to provide anticipated timescales and advised that Q5 reiterates Q2
- Q6 – Trust to provide total cost charged by Verita
- Q7 – the complainant disputed the Trust's reliance on section 36
- Q8 – Trust to provide copy of any documentation approved by any executive member(s)
- Q9 – Trust to provide any interim or final reports Verita prepared
- Q10 – Trust to provide briefing papers it gave to Verita

7. On 16 June 2021 the Trust sent the missing terms of reference document to the complainant.
8. The Trust provided an internal review on 11 August 2021. With regard to Q1, the Trust advised why it had selected Verita to undertake the work in question and gave more detail on the associated procurement process and guidelines. It provided a timeline for the instigation of the work and information on the amounts Verita invoiced from December 2020 to June 2021.
9. With regard to Q2, the Trust provided more detail and advised that the review had been presented to the Board of Directors on 29 July 2021. The Trust provided the complainant with a link to the published review.
10. With regard to Q6 the Trust again provided a breakdown of the invoices received from December 2020 to June 2021.
11. With regard to Q8 the Trust released a 'Statement of Need' document that was approved by two of its Executive Directors and provided further detail on how the project was approved.
12. With regard to Q9 the Trust again provided the complainant with a link to the published review.

13. Finally, the Trust confirmed it was relying on section 12 to refuse to comply with Q10.

Scope of the case

14. The complainant contacted the Commissioner on 15 July 2021 to complain about the way their request for information had been handled.
15. The Commissioner notes from the Trust's submission to him that it continued to correspond with the complainant after its internal review of 11 August 2021. The complainant submitted further requests on 16 September 2021, 20 September 2021 and 24 September 2021 ie these requests were submitted after the complainant had submitted their complaint to the Commissioner.
16. The Trust has also advised the Commissioner that it has withdrawn its reliance on section 36 and section 12 with regard to part 7 and part 10 of that request.
17. The complainant has written to the Commissioner at length with a number of concerns about their requests to the Trust and the circumstances behind them. The complainant has also raised other, wider concerns they have about the Trust. However, given his role and the timing of the complaint, the Commissioner will consider only whether the Trust has complied with FOIA in respect of the request of 4 May 2021.
18. The Commissioner's investigation has therefore focussed on parts 1, 2, 5, 6, 7, 8, 9 and 10 of the request and whether, on the balance of probabilities, the Trust holds any further information within scope of these parts. He will also consider the timeliness of the Trust's response.

Reasons for decision

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

19. 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 requested information and, under subject (b), to have the information communicated to them if it is held and is not subject to an exemption.
20. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following receipt of the request.

21. In its submission to the Commissioner the Trust has described the searches it undertook for information relevant to the above eight parts of the request.
22. The Trust has first confirmed that all relevant information would be held electronically and that it has searched all the electronic files where information and documents are stored in relation to this work. It extended that search to include the files of those involved in the activity around the report. and the email accounts of those involved. The Trust has advised that it has searched all available locations and asked all staff involved in the activity at the time to provide any further information they hold regarding the review and the decision to commission it. The Trust has confirmed that it has not identified any further information regarding this activity.
23. The Trust used the following search terms: 'AHMs', 'Associate Hospital Managers' and 'Verita'. Laptops, network drives, and folders held on shared servers and within Trust email accounts were searched.
24. The searches were undertaken by those involved with the activity at that time including: the Associate Director of Risk, the Deputy Director of Transformation, the Chief Improvement and Compliance Officer, the Executive Assistant to the Chief Improvement and Compliance Officer, the Mental Health Law Manager, the Deputy Company Secretary, the Company Secretary and the Head of Procurement.
25. With regard to part 7 of the request the Trust has told the Commissioner that in August 2021 it had disclosed a procurement exception form. The previously released terms of reference and the timeline of activity around the procurement that it had produced were also relevant to part 7.
26. The Trust has also advised the Commissioner that it holds no further information within the scope of part 10 of the request that it has not already disclosed.
27. The Trust says that all those involved with the data have confirmed that they have shared all relevant information about the review. It says there is no outstanding or withheld information to share that is relevant to the complainant's request.
28. Because it was keen to provide the complainant with as much information as it could, the Trust says it went as far as contacting Verita to ensure that it had not missed anything internally, which it might have been shared with Verita.

The Commissioner's conclusion

29. Whilst acknowledging that he is not an expert on these matters, it seems to the Commissioner that the procurement exercise that is the subject of the complainant's request, and the subject of their concern, was, in the scheme of things, a relatively modest and straightforward exercise. The Trust explained to the complainant that the value of the exercise was under procurement thresholds and that it was fully in line with Trust "SFIs" [Standing Financial Instructions] for such a contract to be awarded without the need for a competitive process.
30. The Commissioner has not been persuaded by the complainant's arguments that further relevant information would and must be held. The Commissioner is not concerned with recorded information that a public authority **should** hold, he is concerned only with the information that a public authority does or does not hold (on the balance of probabilities). With that in mind, he considers that the Trust has carried out appropriate and satisfactory searches for any information relevant to the different parts of the request – it has asked the appropriate individuals to search appropriate areas and used appropriate search terms. The Trust has even approached Verita to see if it held any other relevant information. Having considered all the circumstances, the Commissioner has decided that, on the balance of probabilities the Trust has released all the relevant information it holds that falls within scope of parts 1, 2, 5, 6, 7, 8, 9 and 10 of the request and has complied with section 1(1) of FOIA.
31. The Trust did not fully comply with section 10(1), however. The request was submitted on 4 May 2021 and the Trust communicated some of the requested information outside the 20 working day requirement; the terms of reference document on 16 June 2021 and other relevant information in August 2021.

Right of appeal

32. 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

33. 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.
34. 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