

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2024

Public Authority: Kent Community Health NHS Foundation Trust
Address: The Oast, Unit D
Hermitage Lane, Barming
Maidston
Kent ME16 9NT

Decision (including any steps ordered)

1. The Commissioner's decision is that on the balance of probabilities, Kent Community Health NHS Foundation Trust ('the Trust') doesn't hold the requested information associated with a contract awarded to Psicon. The Trust breached section 1(1)(a) and section 10(1) however, as it didn't confirm it doesn't hold some of the information within the statutory timeframe.
2. It's not necessary for the Trust to take any corrective steps.

Request and response

3. The complainant made the following information request to the Trust on 7 July 2023:

"[1] Please could you provide me with the relevant sections of the documentation defining the type/range of autism assessment service KCHFT commissioned Psicon to deliver as part of their subcontracting arrangements (covering things like the types of cases accepted, whether the service should be face-to-face or online or a choice; whether more than one clinician should be involved in the assessment;

how long the assessments should be; what tools should be used; and any grounds for changing these parameters, etc.)

[2] Please could you also provide any procedures or contractual provisions for Psicon to reject unsuitable referrals coming from KCHFT's referral team, and any procedures or contractual provisions for Psicon to forward-on complex cases to Sinclair-Strong or back to the KCHFT's referral team if the need becomes apparent.

[3] Please could you also provide me with the evidence Psicon provided the KCHFT prior to being awarded their contract to demonstrate their autism assessment service is compliant with NICE guidelines and other statutory regulations and clinical standards.

[4] Please could you provide an overview of the clinical standards & statutory regulations Psicon are contractually obliged to adhere to (with links to the documents if these are already published).

[5] Please could you identify which department is responsible for ensuring Psicon is compliant with the standards and terms set out in the contract."

4. The Trust responded on 27 July 2023. It provided information in response to Q1, Q2, Q4, and Q5. With regard to Q3, the Trust said it was relying on section 43(2) of FOIA to withhold the requested information.
5. The complainant requested an internal review on 28 July 2023 and the Trust provided one on 18 August 2023, addressing queries and clarifying points that the complainant had raised. The complainant requested a further internal review on 30 September 2023 with regard to Q3 of the request. The Trust provided a second internal review on 5 December 2023. It maintained its reliance on section 43(2).
6. The complainant submitted a complaint to the Commissioner on 22 December 2023 about the Trust's reliance on section 43(2). As a result of the complaint, the Trust reconsidered its response. It provided the complainant with a fresh response on 26 January 2024, now advising that it doesn't hold the information they've requested in Q3.

Reasons for decision

7. This reasoning covers whether, on the balance of probabilities, the Trust holds the information the complainant has requested in Q3 of their request. He'll also consider the timeliness of the Trust's response.
8. Under section 1(1)(a) of FOIA a public authority is obliged to confirm to an applicant whether or not it holds the information they've requested.
9. 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.
10. In Q3, the complainant has requested evidence that Psicon provided to the Trust before a contract was awarded to it, that demonstrated that its autism assessment service is compliant with the relevant standards.
11. In a submission to the Commissioner, the Trust has explained why it doesn't hold that information. It prefers that this explanation isn't shared in this decision notice, which the Commissioner has respected on this occasion. The Trust has, however, told the Commissioner that it's previously advised the complainant that relevant providers have confirmed that they're registered with the Care Quality Commission and could evidence that they're meeting NICE guidance and relevant clinical standards.
12. The Commissioner notes that the Trust has now re-considered whether it holds the information in Q3 and has identified that it doesn't. He accepts the explanation the Trust has given and is satisfied that, on the balance of probabilities, the Trust doesn't hold the information requested in that question.
13. The Trust initially applied section 43 to this part of the request which suggested that it held the information. As such, the Trust breached sections 1(1)(a) and 10(1) of FOIA as it didn't confirm that it doesn't in fact hold the information within the statutory timeframe.

Right of appeal

14. 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

15. 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.
16. 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