

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2018

Public Authority: North West Boroughs Healthcare NHS
Foundation Trust

Address: Hollins Park House
Hollins Lane
Winwick
Warrington
WA2 8WA

Decision (including any steps ordered)

1. The complainant has requested information from North West Boroughs Healthcare NHS Foundation Trust (the Trust) [formerly 5 Boroughs Partnership NHS Foundation Trust] about ethnic minority service users.
2. The Commissioner's decision is that the Trust has failed to comply with section 1(1) of the FOIA in failing to confirm or deny if recorded information within the scope of the request was held. The Commissioner has also found that the Trust failed to comply with section 16(1) of the FOIA in failing to clarify with the requester the specific information sought. However, the Trust's response was provided within the twenty working day timeframe specific in section 10 of the FOIA.
3. The Trust has since sought clarification from the requester and issued a fresh response. The complainant has not raised any specific issues with the Commissioner about the Trust's fresh response. The Commissioner does not require the Trust to take any steps.

Request and response

4. On 28 November 2016, the complainant wrote to the Trust and requested information in the following terms:

"Please inform me whether or not you hold the information specified below, and if you do please send me a copy.

In respect of Black, Asian, Minority Ethnic (BAME) service users who, due to having specific problematic experiences relating to their ethnic or cultural identity, or due to their experience of racism, find it difficult in communicating with and also accessing your services I am requesting a copy of the recorded information you hold of what:-

Are the specific issues that BAME service users (as described above) experience that makes it difficult for them to communicate with and also access your services.

Are the needs of BAME service users (as described above) to enable them to communicate with and also access your services.

Provision has been made in respect of the needs of BAME service users (as described above) to enable them to communicate with and also access your services.

I am also requesting a copy of the recorded information you hold which details the training your medical staff have had in respect of the assessment of:-

*The effects of racism upon the mental well-being of BAME individuals.
The effects of ethnic isolation upon the mental well-being of BAME individuals."*

5. The Trust responded on 23 December 2016. It failed to confirm or deny whether any recorded information within the scope of the request was held. It said that there were no issues with BAME service users communicating with the Trust or accessing its services. It said that the Trust works with local authorities to identify and prepare for community developments to ensure that BAME service users can access all services/providers to meet their health, social and other requirements. It also said that staff must complete core training on equality, diversity and human rights every three years. This is offered on the Trust's induction programme and via an e-learning module for refresher training. It also offers face to face training sessions.

6. Following an internal review the Trust wrote to the complainant on 14 February 2017. It acknowledged that it did not confirm or deny whether all the requested information was held in its initial response. It denied holding information about staff training but failed to confirm or deny if the remainder of the information was held.

Scope of the case

7. The complainant contacted the Commissioner on 21 April 2017 to complain about the way his request for information had been handled. The complainant stated that he was particularly concerned that the Trust had failed to confirm or deny that the requested information was held within 20 working days. If held, that it failed to provide him with a copy of the information, and if not held that it failed to issue a refusal notice in accordance with the requirements of section 17(1) of the FOIA.
8. The Commissioner wrote to the Trust on 7 June 2017 and asked a series of questions to establish whether any recorded information was held. The Trust responded to the Commissioner on 27 September 2017. It said that it found the complainant's request 'extremely difficult to understand' but that clarification was not sought from him as previous requests for clarification [in relation to other requests] have not elucidated any further information that assisted the Trust in understanding and responding to the requests.
9. In regard to the portion of the request concerning issues with BAME service users needs and difficulties in communicating and accessing services, the Trust said that it *may* hold recorded information. Any incidents that may have been reported would be recorded in the patient's care record and/or the member of staff's personnel record and would therefore be exempt from disclosure under section 40(2) of the FOIA (personal information) as confidential personal data.
10. In regard to the portion of the request concerning the provision made in respect of the needs of BAME service users, the Trust confirmed that the requested information is held within its EDS2 report dated 2015 which is available on its website and that the 2016 report is due to be published in the same location shortly. It provided a link to the relevant section of its website. It applied section 21(1) of the FOIA (information accessible by other means) to this information. In regard to the portion of the request concerning information about staff training it confirmed that the Trust does not hold this information but failed to answer the Commissioner's questions.
11. The Commissioner wrote to the Trust again on 20 February 2018 and said that although the Trust had explained that it found the request

extremely difficult to understand it did not seek any clarification from the complainant about the information requested, that it interpreted the scope of the request itself, that it did not conduct searches for some of the information it believed was requested and applied section 40(2) of the FOIA to information it 'may' hold.

12. The Commissioner reminded the Trust of its duty under section 1(1) and 16(1) of the FOIA and asked the Trust to seek clarification from the complainant about exactly what information he was requesting and to then go on and conduct reasonable searches for the information.
13. The Trust wrote to the complainant on 27 February 2018 seeking clarification of the request. The complainant replied on 16 March 2018 clarifying the entirety of the request. The Trust issued a fresh response to the complainant on 9 May 2018.
14. The Commissioner wrote to the complainant on 25 May 2018 saying that as she has not received any further contact from him since the Trust issued its fresh response she will complete a review of the case and prepare a decision notice in relation to his concerns about the Trust's handling of the request up to that point [his concerns provided on 21 April 2017].
15. The complainant replied to the Commissioner on 29 May 2018 saying that he was not happy with the Trust's fresh response and that he was considering submitting a request for an internal review. The Commissioner therefore replied to the complainant on 31 May 2018 advising that she would not prepare a decision notice until after he had received the Trust's review decision as he may wish to raise further issues to be considered for investigation by the Commissioner and included in her decision notice.
16. The complainant then replied to the Commissioner on 9 July 2018 saying that he had decided not to request an internal review by the Trust and asked the Commissioner to complete her review [with a view to preparing a decision notice]. The complainant did not indicate or identify any specific issues with the Trust's fresh response that he wanted the Commissioner to consider.
17. As directed by the complainant, the scope of the Commissioner's investigation therefore was to determine whether the Trust had complied with section 1 of the FOIA in respect of the initial response provided to the complainant. The Commissioner has also considered whether the Trust was required to provide advice and assistance as per section 16 of the FOIA in seeking clarification of the request.

Reasons for decision

Section 1(1) of the FOIA – General Right of access to information Section 16 – Duty to provide advice and assistance

18. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exemption(s) that may apply.
19. Section 16 of the FOIA states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants. If a request is not sufficiently clear to enable the authority to locate or identify the requested information, then its duty to provide advice and assistance will be triggered and it must go back to the requester and ask for further clarification.
20. In respect of section 1 of the FOIA, the Commissioner notes that in his request the complainant specifically asked for all recorded information held within the scope of the request (e.g., *“Please inform me whether or not you hold the information specified below, and if you do please send me a copy.”*) The Commissioner however also notes that in its initial response to the complainant, the Trust failed to confirm or deny whether any recorded information was held.
21. In respect of section 16 of the FOIA, in circumstances where a request is ambiguous, a public authority is required to provide appropriate advice and assistance to the requestor so as to enable them to clarify their request. In this case, the Trust has confirmed that although it found the request difficult to understand it did not seek to clarify the request with the complainant, and instead applied its own interpretation of the request.
22. The Commissioner therefore finds that the Trust has breached the requirements of section 1(1) and 16(1) of the FOIA. As the Trust has now sought clarification from the complainant and issued a fresh response and the complainant has not raised any specific issues in relation to this, there is no further action required by the Trust.

Other matters

Section 10(1) of the FOIA

18. Section 10(1) of the FOIA states:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

19. The complainant submitted his information request to the Trust via the whatdotheyknow.com website on 28 November 2016 and the Trust provided its initial response on 23 December 2016, which was within the 20 working day time frame for compliance. The Commissioner therefore finds that there has been no breach of section 10(1) of the FOIA by the Trust.

Right of appeal

11. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

12. 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.
13. 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

[Name of signatory]
[Job title of signatory]
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF