

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: NHS Wigan Borough Clinical Commissioning Group (WBCCG)

Address: Wigan Life Centre
College Avenue
Wigan
WN1 1NJ

Decision (including any steps ordered)

1. The complainant has requested information relating WBCCG's complaints procedures in 2014. WBCCG responded, disclosing the recorded information it holds.
2. The complainant disputes that all recorded information held has been provided. The Commissioner's decision is that, on the balance of probabilities, WBCCG does not hold any further recorded information to that already disclosed. She therefore does not require any further action to be taken.

Request and response

3. On 24 March 2017, the complainant wrote to WBCCG and requested information in the following terms:

"1) All information in all the paper and electronic documentation/forms that you use to record your handling of any service users formal complaint, that was first submitted to you in May 2014, that you decided not to investigate.

2) All information you hold which states what records you should and must make in respect of any service users formal complaint, that was first submitted to you in May 2014, that you decided not to investigate.

- 3) All information you hold which states all you should and must do with any service users formal complaint, that was first submitted to you in 2014, that you decided not to investigate.
- 4) Copy of all information you hold regarding a service user's formal complaint first emailed to you in May 2014 and included complaint issues about a [name redacted] who was working for 5 Boroughs Partnership NHS organisation."
4. WBCCG responded on 29 March 2017. It stated that it considered the request was a request for the complainant's own personal data. It therefore advised the complainant to submit a Subject Access Request (SAR) under the Data Protection Act 1998.
5. The complainant replied on 29 March 2017. He stated that his request was not a SAR but an information request under the FOIA, as he was not seeking the disclosure of any personal data.
6. WBCCG wrote to the complainant on 30 March 2017 to ask him to clarify certain elements of his request and what information he required.
7. The complainant responded on 28 April 2017.
8. WBCCG responded on 17 May 2017 disclosing the requested information it holds falling within the scope of the request.
9. The complainant requested an internal review on 14 June 2017.
10. WBCCG carried out an internal review and notified the complainant of its findings on 28 June 2017. It provided a link to its complaints policy, available on its website and advised the complainant that it considered this information is reasonably accessible by other means and so exempt under section 21 of the FOIA.

Scope of the case

11. The complainant first contacted the Commissioner on 27 September 2017 to complain about the way his request for information had been handled. However, due to personal reasons the complainant asked for the case to be temporarily closed. The Commissioner was then asked to reopen the case and begin her enquiries in February 2018.
12. On 26 February 2018 the Commissioner asked the complainant to confirm why he remained dissatisfied with WBCCG's handling of his request. The complainant replied stating that:

- (a) WBCCG had disclosed files containing personal data, which he believes should not have been disclosed.
 - (b) WBCCG failed to provide any information for question 1.
 - (c) In relations to questions 2 and 3, he believes WBCCG must hold further recorded information.
 - (d) Regarding question 4, again the complainant believes WBCCG has failed to disclose all the information it holds.
 - (e) The complainant also stated that he considers it is illegal and contrary to official guidance for WBCCG to not hold any further recorded information and he referred to the following regulations/guidance:
 - The Local Authority Social Service and National Health Service Complaints (England) Regulations 2009.
 - NHS Constitution (DH, 2009).
 - The Principles of Good Complaints Handling (Parliamentary and Health Service Ombudsman 2009).
13. The Commissioner's investigation has therefore focussed on whether WBCCG holds any further recorded information to that already provided. It has also considered whether there has been any procedural breaches of the FOIA.
14. With regards to element (a) and the complainant's concerns that he received personal data that he did not request. It is noted that the complainant specifically stated in his request that he did not wish to receive any correspondence between the WBCCG and the complainant. However, when responding WBCCG did include personal data. The Commissioner wishes to point out that the personal data disclosed was the complainant's own personal data. Although the complainant did state that he did not require this information and WBCCG failed to follow this instruction, it is unlikely that WBCCG breached the Data Protection Act (1998 Act, as that was the Act in force at the time) by doing so. And in any event, any concerns here would be best addressed under the DPA, as all personal data of which the applicant is the data subject is exempt information under section 40(1) of the FOIA and so is excluded from this investigation.

Reasons for decision

Does WBCCG hold any further recorded information?

Question 1

15. The Commissioner asked WBCCG to explain exactly how service users' complaints were recorded in 2014; whether investigated or not. She also asked it to confirm what forms and documents are used to record them and where are details of such complaints held. She also asked WBCCG to confirm what recorded information falls within the scope of this question and whether this information had been provided to the complainant.
16. WBCCG confirmed that in 2014 complaints were recorded on a database and allocated a reference number if they were investigated. If they were not investigated they were not recorded on the database or allocated a reference number. Instead copies of these complaints and the responses issued (which recorded the reasons why it was not investigated) were held in an electronic folder with secure access.
17. It explained that the situation has changed since then. In 2016/17 WBCCG decided to update its system. From this point onwards all complaints whether investigated or not were logged onto the database and given a reference number. It would also enter a note stating whether it would be investigating or directing the complaint to another organisation.
18. In August 2015 it also introduced a paper form as a working document when investigating a complaint. But this was not in use when WBCCG received the complainant's complaint or in 2014.
19. In terms of what recorded information it holds, WBCCG advised that it only holds a copy of the complaint and the response to the complainant explaining why the complaint would not be investigated and this information was previously disclosed to the complainant. It does not hold anything further.
20. The Commissioner relayed this information to the complainant. In response he stated that WBCCG had an obligation to process the 2014 complaint it received in a certain manner. He therefore believes it will hold recorded information detailing such working practices and such information would fit the criteria of his request.
21. The Commissioner asked WBCCG to comment further.

22. It explained again how complaints in 2014 were dealt with, in particular those that were not investigated and what recorded information is held about them. It stated that the complaint from May 2014 to which the complainant refers related to issues prior to the establishment of WBCCG. He was therefore directed to the correct organisation; 5 Boroughs Partnership NHS Foundation Trust (now known as North West Boroughs Healthcare) and NHS England's Legacy Team.
23. The Commissioner is satisfied that, on the balance of probabilities, WBCCG does not hold any further recorded information to that already identified. It has explained how complaints that were not investigated were recorded in 2014 and how it recorded the handling of them at this time in the response that was issued to the complainant. These complaints, in 2014, were not entered onto its database but instead a copy of the complaint, correspondence and its response (confirming whatever decision it had made and why) were retained in a separate electronic folder. It has also confirmed that the paper form, used as a working document when investigating a complaint, was not in operation in 2014; only from August 2015 onwards when it was introduced.

Question 2 and 3

24. The Commissioner asked WBCCG to confirm whether it holds any further recorded information to that already provided. She explained that the complainant believes it will hold more specific information fitting these two questions and stated:

"such information would be:

- 1) Found in their internal documenting/processing of the very serious complaints they receive.
- 2) Needed for many other reasons such as their staff to follow and training purposes, in the event of any; legal claims by service users, investigation and regulatory work by such as the Health Ombudsman, Care Quality Commission, General Medical Council."

25. The complainant also commented that:

"WBCCG's complaints policy and procedure which they informed me of states;

2.6. The policy is consistent with:

- The Local Authority Social Service and National Health Service Complaints (England) Regulations 2009 ***
- NHS Constitution (DH, 2009)

- The Principles of Good Complaints Handling (Parliamentary and Health Service Ombudsman 2009)
- Listening, Improving, responding: a guide to better customer care (DH, 2009)
- Being open ? communicating patient safety incidents with patients and their carers (NPSA, 2009)
- Health and Social Care Act 2012.

To comply with the above WBCCG must hold information fitting criteria of my FOI which they have intentionally withheld."

26. WBCCG confirmed that it does not hold any internal documents or information of the nature specified in these two questions other than the complaints policy/procedure, which it has already directed the complainant to. It went on to say that WBCCG receives only a small number of complaints each year and the policy and procedure has been satisfactory to serve its needs to date. If a specific complaint response required further advice or guidance this would be sought and agreed with wider management on an ad hoc basis.
27. Again, the Commissioner relayed this information to the complainant expressing her view that she was satisfied that no further recorded information is held.
28. The complainant responded, stating that WBCCG will hold further recorded information fitting the criteria of these two questions, for example, in its training of staff.
29. The Commissioner asked WBCCG to comment further and to check again that no further recorded information is held. It stated again that it does not hold any internal documents/information of the nature specified other than the complaints policy/procedure which it previously directed the complainant to. This has been sufficient for its needs to date.
30. The Commissioner has no reason to doubt the submissions she has received from WBCCG. It has revisited the request, at the request of the Commissioner and checked again exactly what recorded information is held. It has confirmed that it does not hold any further recorded information and, on the balance of probabilities, the Commissioner is satisfied that this is the case.

Question 4

31. The complainant stated that WBCCG failed to disclose *all* the information it holds, which can be disclosed under FOIA. For example he stated that a record of why the 2014 complaint was not investigated must be held. He believes this further information will not contain 100% personal data but other information which can be disclosed under FOIA, as it would

be likely to include reference to legal reasons and/or policy reasons as to why no investigation was held.

32. The Commissioner asked WBCCG to reconsider this question again to ensure that all recorded information has been identified.
33. WBCCG confirmed again that the complainant has received all the recorded information it holds falling within the scope of this question. It holds the complaint correspondence and the final response issued to the complainant but nothing else. As this was the complainant's own complaint to WBCCG, he received this information previously in accordance with a subject access request that was processed under the Data Protection Act 1998.
34. It has said that at the time of the complaint a discussion would have been held between the complaint's manager and assistant director and the decision recorded in the final correspondence to the complainant; information which the complainant is already in receipt of. No other records were made and therefore there is no further recorded information to disclose.
35. The Commissioner once again relayed this information to the complainant, confirming that she was satisfied that on the balance of probabilities WBCCG does not hold any further recorded information.
36. The complainant responded stating that the fact that a discussion was held between the complaint's manager and assistance director must mean that further recorded information is held. He also advised the Commissioner that further recorded information must be held because a formal complaint about WBCCG's handling of the May 2014 complaint was submitted to the PHSO. He commented that once a complaint is submitted to the PHSO, no matter whether it is investigated or not, the PHSO will always share correspondence with the complained about organisation and vice versa. He therefore believes WBCCG will hold recorded information that was processed as a result of the PHSO referral; not just correspondence between the PHSO and WBCCG but internal emails and correspondence relating to how it was addressed.
37. The Commissioner asked WBCCG to consider the matter further and to provide its final submissions.
38. It confirmed that the 2014 complaint was discussed in the weekly review meeting at the time and it was advised that the standard response would be sent, as it was not a complaint for WBCCG to deal with. This was carried out verbally and no record of these discussions was made.
39. With regards to the PHSO, it confirmed that the PHSO did not contact it. WBCCG commented that the PHSO would have contacted the

organisation that dealt with the complaint. It therefore does not hold any further recorded information of this nature.

40. The Commissioner is once again satisfied that all relevant searches and enquiries have now been made and on the balance of probabilities no further recorded information is held.

Procedural matters

41. With regards to WBCCG's complaints policy, the Commissioner considers WBCCG should have informed the complainant within 20 working days of the receipt of his clarification (28 April 2017) that it was refusing to disclose this information under section 21 of the FOIA. Instead of issuing an appropriate refusal notice under section 17 of the FOIA on 17 May 2017, citing section 21 of the FOIA and providing the necessary link to its website, it informed the complainant that its complaints policy was available on its website. Section 21 of the FOIA was not cited and the necessary link provided until the internal review response on 28 June 2017. The Commissioner therefore considers WBCCG has breached section 17 of the FOIA in this case.

Right of appeal

42. 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

43. 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.
44. 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

Samantha Coward
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