

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 April 2020

**Public Authority:** East London NHS Foundation Trust

**Address:** The Green  
1 Roger Dowley Court  
London  
E2 9NJ

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to ECT (electroconvulsive therapy), serious incidents, restraints and seclusion. The Trust provided information relating to ECT but refused to comply with the requests relating to serious incidents, restraints and seclusions as it said it would exceed the cost limit under section 12 FOIA to do so.
2. The Commissioner's decision is that the Trust was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the requests. The Commissioner does not however consider that the Trust provided the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 16 July 2019 the complainant made two separate requests for information. The first request for information under the FOIA was for:

*"Please provide ECT information under the FOI act to the following questions :-*

- 1. Please supply patient's information ECT leaflet.*
- 2. Please supply patient ECT consent form.*
- 3. Please supply any ECT reports/investigations*
- 4. How many ECT in 2018?*
- 5. What proportion of patients were men/women?*
- 6. How old were they?*
- 7. What were the diagnoses and in what proportions?*
- 8. How many were receiving ECT for the first time?*
- 9. How many patients consented to ECT?*
- 10. How many SERIOUS INCIDENT REPORTS were investigated outside the NHS and CCG ?*
- 11. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?*
- 12. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?*
- 13. How many patients died by suicide within a few months of receiving ECT(whether or not ECT was considered the cause)?*
- 14. How many patients have suffered complications during and after ECT and what were those complications?*
- 15. Have there been any formal complaints from patients/relatives about ECT?*
- 16. If so, what was their concerns?*
- 17. How many patients report memory loss/loss of cognitive function?*
- 18. What tests are used to assess memory loss/loss of cognitive function?*
- 19. Have MRI or CT scans been used before and after ECT?*
- 20. If so what was the conclusion?*
- 21. How does the Trust plan to prevent ECT in the future ?"*

6. The second request for information was for:

*"Please provide SERIOUS INCIDENT information under the FOI act to the following questions :-*

- 1. Please supply SERIOUS INCIDENT REPORTS patient???'s information leaflet.*
- 2. Please supply patient SERIOUS INCIDENT REPORTS consent form.*
- 3. Please supply any serious incident reports/investigations*
- 4. How many SERIOUS INCIDENT REPORTS in 2018?*

5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *How many were receiving SERIOUS INCIDENT REPORTS for the first time?*
9. *How many patients consented to SERIOUS INCIDENT REPORTS?*
10. *How many SERIOUS INCIDENT REPORTS were investigated outside the NHS and CCG ?*
11. *How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
12. *How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
13. *How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
14. *How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?*
15. *Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?*
16. *If so, what was their concerns?*
17. *How many patients report memory loss/loss of cognitive function?*
18. *What tests are used to assess memory loss/loss of cognitive function?*
19. *Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?*
20. *If so what was the conclusion?*
21. *How does the Trust plan to prevent SERIOUS INCIDENTS in the future ?*

*Please provide restraints information under the FOI act to the following questions :-*

1. *Please supply RESTRAINTS patient???'s information leaflet.*
2. *Please supply patient RESTRAINTS consent form.*
3. *Please supply any Restraints/investigations*
4. *How many RESTRAINTS in 2018 ?*
5. *What proportion of patients were men/women?*
6. *How old were they?*
7. *What were the diagnoses and in what proportions?*
8. *How many were receiving RESTRAINTS for the first time?*
9. *How many patients consented to RESTRAINTS?*
10. *How many RESTRAINTS were investigated outside the NHS and CCG ?*

11. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
12. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
13. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)?
14. How many patients have suffered complications during and after RESTRAINTS and what were those complications?
15. Have there been any formal complaints from patients/relatives about RESTRAINTS?
16. If so, what was their concerns?
17. How many patients report memory loss/loss of cognitive function?
18. What tests are used to assess memory loss/loss of cognitive function?
19. Have MRI or CT scans been used before and after RESTRAINTS?
20. If so what was the conclusion?
21. How does the Trust plan to reduce restraints in the future?

Please provide SECLUSION information under the FOI act to the following questions: -

1. Please supply patient's information SECLUSION leaflet.
2. Please supply patient SECLUSION consent form.
3. Please supply any SECLUSION reports/investigations
4. How many SECLUSION in 2018?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. How many were receiving SECLUSION for the first time?
9. How many patients consented to SECLUSION?
10. How many SECLUSIONS were investigated outside the NHS and CCG?
11. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
12. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
13. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?
14. How many patients have suffered complications during and after SECLUSION and what were those complications?
15. Have there been any formal complaints from patients/relatives about SECLUSION?
16. If so, what was their concerns?
17. How many patients report memory loss/loss of cognitive function?
18. What tests are used to assess memory loss/loss of cognitive function?

19. *Have MRI or CT scans been used before and after SECLUSION?*  
20. *If so what was the conclusion?*  
21. *How does the Trust plan to prevent SECLUSION in the future?"*

7. On 21 October 2019 the Trust responded in relation to the first request. It provided most of the ECT information (apart from question 9). On 22 October 2019 it provided information in relation to question 9.
8. The Trust provided a further response on 4 November 2019 in relation to the second request explaining that it would exceed the cost limit under section 12 FOIA to comply and therefore it was not obliged to do so.
9. The complainant requested an internal review on 6 November 2019. The Trust sent the outcome of its internal review on 6 January 2020. It upheld its application of section 12 FOIA to the second request.

## **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way the second request for information had been handled.
11. The Commissioner has considered whether the Trust was correct to apply section 12 FOIA to the second request in this case.

## **Reasons for decision**

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### **Section 12 – cost exceeds appropriate limit**

12. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
- either comply with the request in its entirety, or
  - confirm or deny whether the requested information is held.
13. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a

maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- (a) determine whether it holds the information
- (b) locate the information, or a document which may contain the information
- (c) retrieve the information, or a document which may contain the information, and
- (d) extract the information from a document containing it.

14. The appropriate limit for the Trust is £450 or the equivalent of 18 hours work.
15. For the request relating to serious incident reports, the Trust said that no information was held in relation to question 1 or 2. In relation to question 3, it explained that a search would need to be run on its incident reporting system Datix to establish the serious incidents for the time period. It confirmed this would take 5 minutes in total. From the listing on Datix it would then be necessary to access each of the incident numbers individually. It said this would take 2 minutes per report (which would amount to 322 minutes in total). It went on that each report would need to be saved to a separate folder to extract them prior to disclosure (at 1 minute per report this would amount to 161 minutes in total). It said that this work would therefore be equivalent to 488 minutes or 8 hours and 8 minutes work.
16. For question 4, to run the Datix search to find the number of serious incident reports in 2018 would take the Trust 10 minutes in total.
17. In relation to question 5, the Trust confirmed that this information is not held as either a set or free text field on Datix. It would therefore need to run a report to ascertain the serious incident reviews prior to assessing the proportion of men and women. It mentioned again the first and second search explained under question 3 which would take 5 and 322 minutes respectively, however as the Trust has already counted this work under question 3, the Commissioner has not accepted this time implication again under question 5. The Trust has said that it would then take 2 minutes per report to extract to a separate folder, log the gender and calculate the proportion which it said would total 322 minutes. As again the Trust has counted extraction of this information under questions 3 (161 minutes), the Commissioner has reduced this to 166 minutes equating to 2 hours 46 minutes work.



18. Question 6 again seems to repeat the work already mentioned, apart from logging age. However as the Trust provided no further time implication for this over and above that already provided under extraction, the Commissioner does not accept any further time implication under question 6.
19. For question 7 again the work already performed is repeated however there is a further two minute time implication to log diagnoses. It said that some serious incidents reviews are in excess of 50 pages. It would therefore take up to 5 minutes to read through each review and place each into a table. Diagnoses will not always be included in the serious incident review and therefore it would need to check against its clinical systems . Diagnoses included in a serious incident review will be free text and would require coding to ensure consistency. It therefore applied an additional 2 minutes per report totalling 322 minutes (as presumably not all would take 5 minutes and so the Trust has reduced the overall implication accordingly) plus 5 minutes to check clinical systems and 30 minutes to assign codes. This would total a further 357 minutes or 5 hours 57 minutes.
20. For question 8 again much of the work already conducted is counted so the Commissioner has discounted this. However the additional work for this question would include accessing each contact from a serious incident review from Datix, put into a table and check for duplicate names. The Trust listed an additional time implication of 2 minutes per record to complete this work which equates to 322 minutes or 5 hours and two minutes work.
21. At this point the Trust's time estimate reaches 22 hours and 3 minutes. The Trust did provide further time implications for the remaining questions relating to serious incidents and for the questions relating to restraints and seclusion. Some of that work is duplicated as already described and discounted but some explains legitimate additional work. The Commissioner has not however described this any further in this Notice.
22. The Trust itself accepts that, "each question has been approached as a separate entity, though in reality we would address some questions together such as the gender and then the age of patients who were subject to an SI review." The Commissioner would again reiterate that duplicate work has not been counted twice.
23. The Trust has also confirmed that the estimate is based on the quickest method of retrieval.
24. The Trust has also acknowledged the complainant's argument that other Trust's had responded more fully to her requests. The Trust said that

although a number of Trusts use the same incident reporting system (Datix) this is an off the shelf product and requires considerable local configuration. Some Trusts will therefore be able to extract the information requested directly from the system whilst others will be unable to do this. Some Trusts have already moved to a new cloud based version of Datix which has sophisticated searching techniques but this has not yet been planned for the Trust.

25. Similarly it said that not all Trusts use the same clinical system. This is an historic situation arising from the termination of the National Programme for Information Technology when organisations were free to choose and build their own clinical systems. Each will therefore be tailored to local needs. Systems are focussed on clinical rather than reporting ability. It said that this should provide some explanation as to why some Trusts may have been able to respond fully whilst the Trust has been unable to do this.
26. Based upon the Trust's submissions, the Commissioner would agree that it would exceed the cost limit to comply with parts 3-8 of the request relating to serious incidents. Given there are further parts to the request relating to serious incidents and multiple part requests relating to restraints and seclusion, given the capabilities of the Trust's Datix system, it would exceed the cost limit to comply in full in this case. Section 12 was therefore correctly engaged.

### **Section 16 – Advice and Assistance**

27. Under section 16 FOIA the Trust is obliged to provide the complainant with advice and assistance to help enable the complainant to refine the request to fall within the cost limit or explain why this would not be possible.
28. In this case the Trust confirmed that with hindsight the Freedom of Information team should have been more helpful to the complainant. It would have been appropriate to advise her where it does not hold the information requested, or where she may have been able to refine her request to seek responses to some of her questions.
29. As the Trust has not provided appropriate advice and assistance, it has breached section 16 FOIA in this case.

### **Right of appeal**

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30. 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@Justice.gov.uk](mailto:grc@Justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.

32. 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.....**

**Gemma Garvey  
Senior Case Officer**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**