

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 June 2020

**Public Authority:** North Cumbria Integrated Care  
NHS Foundation Trust

**Address:** Voreda  
Portland Place  
Penrith  
Cumbria CA11 7QQ

### Decision (including any steps ordered)

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1. Through an eight part request to North Cumbria Integrated Care NHS Foundation Trust (NCIC), the complainant has requested information on various types of complaints and concerns that may have been raised about NCIC and its consultants, and information about one of NCIC's contracts. NCIC addressed the parts of the complainant's request: releasing information it holds, confirming where it does not hold relevant information and directing him to its website where other information is published. The complainant considers that NCIC holds further relevant information.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, NCIC does not hold recorded information relevant to parts 4, 5, 7 and 8 of the request and has released all the information it holds that is relevant to part 3. As such, NCIC has complied with section 1(1) of the FOIA in relation to those parts.
  - The information the complainant has requested in parts 1, 2 and 6 is exempt information under section 21(1) of the FOIA as it is accessible to him by other means.

- In relation to the section 21 exemption, NCIC breached section 17(1) of the FOIA as its refusal notice was inadequate.
3. The Commissioner does not require NCIC to take any remedial steps.

## Request and response

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4. On 19 October 2019, the complainant wrote to NCIC and requested information in the following terms:

*"1) Is there any outstanding Misconduct in Public Office complaints against any Consultants that you have listed on your new website?*

*2) Is there any outstanding Fraud by Abuse of Position of Trust allegations against any consultants that you have listed on your website?*

*3) How many outstanding complaints were inherited by your trust from Cumbria Partnership?*

*4) Is there any outstanding Child Safeguarding complaints inherited from Cumbria Partnership?*

*5) Is there any fit and proper persons tests applications against any Executive Directors?*

*6) Does your trust still have to pay the £20 million a year PFI contract?*

*7) Is there any outstanding allegations/complaints in regards to any members of your Governance team, in regards to lying to the Information Commissioners Office?*

*8) Is there any Consultants listed on your website that were removed as an Executive in disgrace?"*

5. NCIC responded on 18 November 2019. It provided the following answers to the complainant's eight questions. Regarding parts 1 and 2 of the request, NCIC explained that details of consultants working at the Trust are published on its website. It said that if the General Medical Council (GMC) had put in place any restrictions to practice in relation to any consultants, these would also be published on NCIC's website.
6. Regarding part 5 of the request, NCIC advised that its arrangements for the Fit and Proper Person test for directors is contained in a policy that is published on its website. It provided the hyperlink to this policy.

7. Regarding part 6 of the request, NCIC provided the complainant with a hyperlink to its published annual accounts for 2018/2019 which it said contained details relevant to this part.
8. NCIC released information relevant to part 3 and answered the questions asked at parts 4, 7 and 8 (in the negative).
9. In his request for an internal review, the complainant expressed dissatisfaction with NCIC's response for the following reasons:
  - Parts 1 and 2 – the complainant considered that NCIC had not addressed his question and detailed what he said are outstanding complaints against one individual listed on NCIC's website
  - Part 3 – the complainant disputed the figure NCIC had given, stating that there had been 81 complaints from him alone
  - Part 4 – the complainant disputed that there had been no Child Safeguarding complaints inherited from the Cumbria Partnership NHS Foundation Trust. He sent NCIC material which he considered is evidence of such complaints having been inherited
  - Part 5 – the complainant considered that the policy to which NCIC had directed him was not relevant
  - Part 6 – the complainant considered that NCIC had not answered his 'Yes/No' question
  - Part 7 – the complainant considered that, contrary to NCIC's response, there are outstanding complaints associated with NCIC's dealings with the Information Commissioner
  - Part 8 – similarly, the complainant considered that at least one NCIC consultant had been removed as an executive "in disgrace"
10. NCIC provided an internal review on 9 December 2019. It maintained its position regarding part 1 and part 2 of the request, advising the complainant that information relevant to these parts is already accessible to him on its website. NCIC upheld its position regarding part 3. It provided further explanation about its response to part 4 but upheld its overall position and advised the complainant to contact the Parliamentary and Health Service Ombudsman (PHSO). NCIC amended its position regarding part 5 of the request; confirming that it does not hold any relevant information. NCIC gave further explanation and detail to its responses to parts 6, 7 and 8 of the request but upheld its original responses to these parts.

## Scope of the case

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11. The complainant first contacted the Commissioner on 16 November 2019 to complain about the way his request for information had been handled.
12. The Commissioner's investigation has focussed on NCIC's compliance with section 1(1) of the FOIA; that is, whether it holds any further information relevant to five parts of the complainant's request. In relation to the remaining three parts, the Commissioner has considered whether NCIC should have relied on section 21(1) of the FOIA to withhold information it says is already accessible to the complainant. Finally, she has considered whether NCIC's refusal of the above three parts was adequate.

## Reasons for decision

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

13. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to him or her if it is held and is not exempt information.
14. Part 3 of the complainant's request is for the number of outstanding complaints that NCIC inherited from the Cumbria Partnership NHS Foundation Trust ('the Trust'). NCIC had provided this information: 17.
15. In its submission to her, NCIC has explained to the Commissioner that on 1 October 2019, the Trust and North Cumbria University Hospitals merged to become North Cumbria Integrated Care NHS Foundation Trust. On this transfer date there were 17 complaints inherited that had not been concluded on the transfer date.
16. NCIC has told the Commissioner that the complainant has made six complaints to it over a three year period, NCIC says it has exhausted its complaint processes and the complainant, as is his right, referred his complaints to the PHSO. Regarding the '81' complaints the complainant referred to, NCIC says it had therefore closed off these complaints from its active complaints list, as they had been transferred to another organisation for processing (ie PHSO). The complainant listed these 81 complaints in correspondence he sent as supporting material to both

NCIC and the Commissioner. This correspondence is to the Care Quality Commission and is dated 22 July 2019.

17. The request at part 3 is for the number of outstanding complaints NCIC inherited from the Trust ie inherited on the transfer date of 1 October 2019. NCIC has confirmed it inherited 17 outstanding complaints and the Commissioner understands that this was because the complainant's 81 complaints were no longer active at that point because he had been directed to the PHSO. The Commissioner accepts NCIC's position and that the information it holds and has communicated to the complainant (the figure '17') is satisfactory. She therefore finds that NCIC complied with section 1(1) of the FOIA in relation to part 3 of the request.
18. In part 5 of the request the complainant asks whether there are any Fit and Proper Persons test applications against any of its Executive Directors. NCIC had directed the complainant to its website where its general policy on its Fit and Proper Person (Directors) test is published. However, it confirmed that it does not hold specific information relevant to part 5.
19. The complainant has framed this request as a 'Yes/No' question rather than a request for recorded information. Nonetheless, responding to a request under the FOIA requires NCIC to ask itself whether it holds any recorded information about Fit and Proper Person test applications against any of its Executive Directors.
20. In its submission to the Commissioner, NCIC confirmed that it does not hold any such applications on its register. The Commissioner understands this to mean that none of NCIC's Executive Directors have been subject to a Fit and Proper Person test and so it does not hold any relevant information on this matter.
21. The Commissioner notes that, in his request for an internal review, the complainant sent NCIC a document called 'Fit and Proper Person Test Referral'. This is correspondence from the complainant to the Care Quality Commission dated 13 July 2019 in which the complainant refers certain NCIC Directors for the above test. He considers that this is evidence that there *were* Fit and Proper Person test applications against NCIC's Executive Directors. It may well be the case that the complainant submitted such a referral to the CQC. However, NCIC has confirmed that it holds no such applications on its own register. The Commissioner has no reason to doubt the veracity of this, and so accepts that, on the balance of probabilities, NCIC holds no information relevant to part 5 and has complied with section 1(1)(a).
22. The complainant also framed parts 4, 7 and 8 of the request as 'Yes/No' questions rather than requests for recorded information.

23. In part 4 the complainant asked whether NCIP had inherited any outstanding Child Safeguarding complaints from the Trust. NCIC had answered that no such complaints had been inherited – a position the complainant disputed.
24. In its submission NCIC has confirmed that it had advised the complainant that none of the 17 complaints it inherited from the Trust related to alleged safeguarding concerns. Such complaints that the complainant had submitted had been closed by the transfer date of 1 October 2019 because NCIC had exhausted its complaints process and had directed him to the PHSO. The Commissioner accepts NCIC's position; she finds, on the balance of probabilities, that it does not hold any information relevant to part 4 of the request and has complied with section 1(1)(a).
25. In part 7 of the request the complainant asked whether there were any outstanding allegations/complaints associated with any members of NCIC's governance team and relating to "lying to" the Information Commissioner's Office. NCIC gave the answer "No" in its initial response. In his internal review request the complainant referred to a PHSO reference number. He said he had gone to the PHSO as a result of the Information Commissioner's response to a data protection complaint he had submitted to her. In its internal review, NCIC confirmed that there are no outstanding allegations or complaints against any member of the governance team with the Information Commissioner concerning "lying to" the Information Commissioner's Office, that have been brought to the Trust's attention. NCIC noted the complainant's correspondence to the CQC and advised him to either contact CQC or the Commissioner, as either might hold information relevant to this part.
26. In its submission to the Commissioner, NCIC has told her that it is not aware of any such complaints from the complainant that the Commissioner may be handling. The request asks for information about outstanding complaints about NCIC's governance team "lying" to the Commissioner. NCIC has confirmed that it is not aware of any such outstanding complaints, and the Commissioner understands that NCIC's position is that it therefore holds no information relevant to this part. In any case, as has been discussed, NCIC had come into being on 1 October 2019 and by that time it had closed the complainant's complaints and directed him to PHSO. As such, at 19 October 2019 when the complainant submitted his request to NCIC, it did not hold any outstanding complaints from him. The Commissioner is satisfied on the balance of probabilities that NCIC does not hold information relevant to part 7 of the request and has complied with section 1(1)(a) of the FOIA.
27. In part 8 of his request, the complainant asks NCIC if there any consultants listed on its website that were removed as an Executive

Director "in disgrace". As has been noted, this is another 'Yes/No' question which the FOIA does not require NCIC to answer, especially given the qualification contained in the request. This is a subjective description ie the complainant may understand what he means by the term "in disgrace" but may well be unclear to others. However, NCIC advised in its response that no consultants had been removed as an Executive Director "in disgrace". The complainant disputed this and referred to a named individual having ceased to be a Director some time previously. NCIC maintained its position that no consultants had been removed as an Executive Director "in disgrace".

28. In its submission to the Commissioner NCIC said that no medical practitioners listed on its website within Executive roles have been removed "in disgrace". It seems to the Commissioner that part 8 is not confined to consultants listed on its website in Executive roles, but includes *all* consultants listed on its website. It could have been the case that one or more of these consultants had been in an Executive role in the past but were not any longer for one reason or another. The Commissioner therefore clarified this with NCIC. NCIC confirmed that no consultant listed on its website has been removed from the role of Executive Director. NCIC noted that individuals' circumstances may change as a result of retirement or amendments to roles and responsibilities, but at no stage has an individual 'been removed' from as a Director in the sense that the complainant might reasonably be interpreted to mean, given the wider context of his request. The Commissioner finds that on the balance of probabilities NCIC does not hold recorded information falling within the scope of part 8 of the request. It has addressed this part satisfactorily and has complied with section 1(1)(a) of the FOIA.

### **Section 21 – information accessible to the applicant by other means**

29. Section 21(1) of the FOIA says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
30. Again framing them as 'Yes/No' questions, in parts 1 and 2 of the request the complainant had asked whether there were any outstanding complaints of particular types against consultants listed on NCIC's website. In its response NCIC had explained that if the GMC had put a restriction in place against any consultant, this would be published on its website, along with the list of its consultants.
31. In his request for a review, the complainant complained that, as it appeared to him, NCIC had avoided answering his questions. He sent NCIC details of what he considered were two such outstanding



complaints – dated February and June 2019. In its internal review, NCIC confirmed to the complainant that information that is relevant to these two parts is accessible to him on its website and it provided the complainant with a link to the relevant page of its website.

32. NCIC's reference to the information being "accessible" to the complainant appears to the Commissioner to be a reference to section 21 of the FOIA.
33. NCIC publishes a list of its consultants on its website and had advised the complainant that any GMC restriction against a consultant would also be published there. NCIC provided the complainant with a hyperlink to the relevant page. The Commissioner is satisfied that the information NCIC publishes is relevant to parts 1 and 2 of the request and that this information is accessible to the complainant by other means, ie through NCIC's website. She has decided that this information is therefore exempt information under section 21(1).
34. The complainant had asked, in part 6 of his request, whether NCIC still has to pay a £20 million a year private finance initiative contract. As noted, the FOIA concerns requests for recorded information – it does not oblige an authority to answer "Yes" or "No" to a particular question. In this case, NCIC initially directed the complainant to recorded information it holds - its published annual accounts – which it considered was relevant to, and addressed, part 6.
35. In its internal review response, NCIC reminded the complainant what obligations the FOIA placed on it ie it that it was not obliged to answer "Yes" or "No" to a particular question. But NCIC did go on to confirm that the contract in question was still in place and directed the complainant again to its annual accounts. In his internal review request, the complainant had complained that NCIC did not answer "Yes" or "No" to his question but does not appear to complain that the published accounts are not relevant to his request.
36. As in its response to parts 1 and 2, NCIC directed the complainant to the relevant part of its website, indicating that the information he had requested in part 6 was published there. It did not refer to the information "being accessible" to him, as it had regarding parts 1 and 2. However, in the interests of consistency, the Commissioner has decided that the information that is relevant to part 6 of the request is exempt information under section 21(1) of the FOIA as it is also accessible to the complainant through NCIC's website.



### **Section 17 – refusing a request**

37. Under section 17(1) of the FOIA, a public authority that is relying on an exemption in Part II of the Act (such as section 21) should issue the applicant with a refusal notice that (a) states that fact (b) specifies the exemption in question and (c) explains why the exemption applies.
38. The Commissioner finds that there were shortcomings in NCIC's response to parts 1, 2 and 6 of the request. In relation to these three parts, it did not clearly state it was relying on an exemption - section 21(1) – and, in relation to part 6, NCIC did not explain why this exemption applied. As such the Commissioner has decided that NCIC's response to these three parts breached section 17(1) of the FOIA.

## Right of appeal

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39. 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)

40. 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.
41. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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