

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2022

Public Authority: NHS Digital
Address: 1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

Decision (including any steps ordered)

1. The complainant has requested information about NHS 111 and the NHS Pathways Clinical Governance Group.
2. The Commissioner's decision is that, on the balance of probabilities, NHS Digital has disclosed the information which it holds within the scope of part 4 of the request.
3. The Commissioner does not require NHS Digital to take any steps.

Request and response

4. On 8 September 2021, the complainant wrote to NHS Digital and requested information in the following terms:
 - "1. Kindly provide a full itemised list and map of the UK showing each NHS 111 Area along with the current service providers identification and contact information for each area.
 2. Please also include within that map the specific clinical commissioning groups by area along with their identity and their website location and contact telephone numbers which are the required complaint path for 111 service complaints.
 3. Please also provide a full disclosure of the NHS Pathways CDSS flowchart which is repeatedly referred to incorrectly as an algorithm, to show all questions and answer responses specified within the system

and any mechanisms or facilities for the "operator" to address matters which fall outside the set response provisioned within the system and how that can be addressed.

4. Please also provide a full list of all members of the NHS Pathways National Clinical Governance Group, along with their contact information and any policy or process established to allow end users of the NHS Pathways CDSS to provide direct feedback regarding the service to the very staff who allegedly designed the system in the first place if indeed any such facility exists.
5. Finally, please provide any information held which would explain why this information is not already published and easily available to the UK Public at this time?"
5. NHS Digital responded on 24 September 2021. It stated that it does not hold information within parts 1 and 2 of the request, and advised that NHS England is responsible for the NHS 111 service, rather than NHS Digital. It also disclosed the information which it holds within the scope of parts 3, 4 and 5 of the request.
6. The complainant replied to NHS Digital on 24 September 2021, expressing their dissatisfaction with the information provided in response to part 4 of the request.
7. Following an internal review NHS Digital wrote to the complainant on 2 November 2021. It upheld its position, and explained that the organisations which it had listed in its initial response to part 4 of the request have different individuals acting as their clinical representative at each NHS Pathways Clinical Governance Group meeting.

Scope of the case

8. The complainant contacted the Commissioner on 2 November 2021 to complain about the way their request for information had been handled, and also copied in NHS Digital's Data Protection Officer to that complaint.
9. The complainant highlighted their dissatisfaction with NHS Digital's response to part 4 of their request. In particular, they disagreed with NHS Digital not disclosing individual names or contact details in response to this part of the request, as a means of users being able to provide feedback directly to those who designed the system.
10. In response to the complainant's email of 2 November 2021, NHS Digital replied on 29 November 2021 and provided further background information and explanation about why it had provided organisational

details, rather than individual details, in response to part 4 of the request.

11. The Commissioner considers the scope of his investigation is to establish, on the balance of probabilities, if NHS Digital has disclosed all information that it holds within the scope of part 4 of the request.

Reasons for decision

Section 1 – General right of access to information

12. Section 1(1) of FOIA requires that any person making a request for information to a public authority must 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 exclusions or exemptions that may apply.
13. In scenarios where there is a dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request.

The complainant's position

15. The complainant argues that NHS Digital should provide names of individuals who are members of the NHS Pathways National Clinical Governance Group, along with contact details for those individuals, so that service users who experience issues with the NHS Pathways CDSS are able to provide direct feedback regarding the service to the individuals who designed the system.

NHS Digital's position

16. NHS Digital explained that the complainant's original request for information asked for a list of members of the the NHS Pathways Clinical Governance Group. It clarified that membership of the NHS Pathways Clinical Governance Group is made up of organisations, not of individual people. Each organisation sends representatives to the Group meetings, but those individuals are not members in their own right.
17. NHS Digital also explained that whilst it understands that the complainant is in fact interested in the names and contact information of

individuals, those individual attendees vary from meeting to meeting, and as such it would not be able to provide a complete list of attendees without the complainant outlining which particular meeting or meetings they are seeking information about. Further, even if such clarification was provided NHS Digital considers that it is highly likely that such information would be exempt from disclosure by virtue of section 40(2).

The Commissioner's conclusion

18. The Commissioner has considered NHS Digital's position, along with the original terms of the request. He has not found it necessary to contact NHS Digital for its further arguments in this case, given the terms of the request for information, together with the detail provided in NHS Digital's correspondence to the complainant.
19. The Commissioner is satisfied that NHS Digital has correctly interpreted the request, as it asked for details of the members of the NHS Pathways Clinical Governance Group, rather than representatives of those members.
20. The Commissioner accepts NHS Digital's explanation that the members of the NHS Pathways Clinical Governance Group are organisations and not individual people. Therefore, NHS Digital was correct to disclose a list of organisations in response to part 4 of the request.
21. The Commissioner is further satisfied that the terms of the request did not seek information regarding individuals who attended a particular Group meeting or meetings on behalf of the member organisations, therefore this information would fall outside of the scope of the request, and NHS Digital need not consider disclosing it in response to the request.
22. As the individual attendees of Group meetings falls outside of the scope of the request, the Commissioner has not gone on to consider NHS Digital's comments regarding section 40(2) in this case.
23. On this basis the Commissioner has concluded that, on the balance of probabilities, NHS Digital has disclosed all information held within the scope of part 4 of the request.

Right of appeal

24. 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

25. 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.
26. 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

Claire Churchill
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Water Lane
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