

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

Public Authority: NHS England
Address: Quarry House Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant made a request to NHS England regarding how South, Central and West Commissioning Support Unit (the CSU) had dealt with an FOIA request on behalf of Brighton and Hove Clinical Commissioning Group (the CCG). NHS England confirmed that it did not hold the requested information under section 1(1)(a) FOIA and that the complainant should direct the request to the CCG.
2. The Commissioner considers that on the balance of probabilities NHS England does not hold the requested information under section 1(1)(a) FOIA.
3. The Commissioner requires no steps to be taken.

Background

4. The complainant explained to the Commissioner that he previously made a request to the CCG on 6 September 2021 for the following information:

"Did the NHS South, Central and West (CSU), decide to withhold the information or was this at the review stage by the Executive Managing Director for Brighton and Hove CCG ?."

This request related to how the CSU had handled a previous request on behalf of the CCG under reference 'IR 1402 BH 09D'.

5. The CSU responded on behalf of the CCG on 21 September 2021. It confirmed that it did not hold recorded information relevant to the request under section 1(1)(a) FOIA. It said that this was because this question did not fall within the scope of FOIA and therefore the CCG would be treating the query as 'Business as Usual'.
6. It appears that the CCG provided a follow up email on 22 September 2022 in which it indicated that section 14 FOIA (vexatious requests) may be applicable to this request.
7. On 27 September 2021 the complainant requested an internal review.
8. On 29 October 2021 the CSU on behalf of the CCG provided the following internal review response:

"The reviewers have agreed that "Did the NHS South, Central and West (CSU), decide to withhold the information or was this at the review stage by the Executive Managing Director for Brighton and Hove CCG?" is not a request for recorded information, so falls outside the scope of the Freedom of Information Act.

As advised, SCW does not make the decisions on what information should be released or withheld. The CCG will advise what information should be withheld, and the FOI team then provide advice and guidance on the application of the exemptions.

The reviewers can confirm that s.14 has not been applied to FOI 39752 BH 09D."
9. The CSU on behalf of the CCG has said that it did not consider this request was a valid request for recorded information. It had however responded to and provided an internal review to a request made under FOIA regarding how a previous FOIA request to the CCG was processed by the CSU.
10. Had the complainant been dissatisfied with the way in which the above request was handled he could have submitted a complaint to the ICO regarding the CSU's handling of this request on behalf of the CCG. The complainant did not make such a complaint to the ICO rather he directed a new FOIA request regarding the handling of 'IR 1402 BH 09D' to NHS England.

Request and response

11. The complainant made the following information request to NHS England on 1 November 2021 relating to a previous FOIA request he had made to

the CCG which had been dealt with by the CSU on the CCG's behalf under reference 'IR 1402 BH 09D':

"I think you have mis understood my request I am asking for is a freedom of information request against NHS South, Central and West (CSU) on the information provided to Brighton and Hove CCG as Brighton and Hove CCG have outsourced there freedom of information request to NHS South, Central and West (CSU).

I need to make this request through NHS England as this is a Freedom of Information request against NHS South, Central and West (CSU).

If you checked out the document I enclosed (CCG process 16-07-21.pdf) which highlights how the process should work (between NHS South, Central and West (CSU) and Brighton and Hove CCG) e.g. the CSU will review/approve the Freedom of Information request and pass this onto the CCG who will then give final approval to release the information or not. Its what information was passed to the CCG for approval or was this changed by the CCG which is what I want to know, if the information was the same as on the information released by the CSU all they need to do is confirm this if not what information did the provide the CCG."

12. On 23 November 2021 NHS England responded. It confirmed that NHS England did not hold the requested information and that the complainant would need to address this request directly to the CCG.
13. On 1 March 2022 the complainant asked NHS England to carry out an internal review. On 19 May 2022 NHS England provided the complainant with the result of the review it had carried out, it upheld its original response.

Scope of the case

14. The complainant contacted the Commissioner as he was dissatisfied with the way in which his request to NHS England had been handled. He considers that NHS England is the correct body to make a request to regarding the CSU's handling of his prior FOIA request on behalf of the CCG.
15. The Commissioner therefore considered the scope of his investigation to be to determine whether NHS England holds the requested information under section 1(1)(a) FOIA.

Reasons for decision

Section 1

16. Section 1 (1) FOIA provides that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

17. The Commissioner has sought to determine whether, on the balance of probabilities, NHS England holds the information requested.

18. In this case the complainant has directed the Commissioner to the CSU's website, under 'Contact us', on which it states:

“Any Freedom of Information requests concerning SCW should be sent to NHS England. NHS England is also responsible for answering information requests about previous Primary Care Trusts (PCTs) as well as NHS England Local Area Teams.”

19. The complainant also provided the Commissioner with a screenshot of an email from the CSU to him in which it advised that if the complainant wanted to submit an FOI 'against' the CSU this should be sent to NHS England.

20. The Commissioner acknowledges that the relationship between NHS England, Clinical Commissioning Groups and Clinical Support Units was not straightforward. However the message on the CSU's website set out above relates to requests directly about the CSU. So, for example, should an applicant wish to find out how many staff are employed by the CSU this should be directed to NHS England in accordance with the advice on the CSU's website as this information would be directly and solely about the CSU.

21. The request in this case relates to how the CSU dealt with an FOIA request on behalf of the CCG. It is not therefore information about the CSU. It is information about how the CSU handled a request on behalf of the CCG. The requested information, if held, would therefore be information held by the CSU on behalf of the CCG. This is why NHS England directed the complainant to submit this request directly to the CCG.

22. Indeed, as demonstrated by the information contained in the 'Background' section above, the CSU did process a request made to the CCG for information relating to the CSU's handling of the previous FOIA request on behalf of the CCG. Unfortunately in that case the CSU did not accept that the specific request was a valid request for recorded information under FOIA and the complainant did not submit a complaint to the Commissioner so this has not been investigated.
23. In this case however, since the internal review was provided in May 2022, the CCG has permanently closed. The function of the CCG (along with two other CCGs) has transferred to NHS Sussex. In line with the old CCG, NHS Sussex advises that:

"Freedom of Information (FOI) requests are managed by South, Central and West (SCW) Commissioning Support Unit.

Requests should be made in writing and directed to sxicb.foi1@nhs.net "
24. In this case the Commissioner must however make his decision based upon the circumstances at the time the request was made on 1 November 2021. At that time the CCG was in existence. The Commissioner has based his decision upon NHS England's response and internal review to this request, the fact that the CSU did not direct the complainant to NHS England in its response or internal review to his request dated 6 September 2021 to the CCG (via the CSU) and the advice contained on the CSU's website and what would have been contained on the old CCG's website regarding where FOI requests should be directed.
25. The Commissioner considers that on the balance of probabilities the information requested is not held by NHS England under section 1(1)(a) FOIA. The request should have been directed to the CCG (as explained above this should have been submitted via the CSU as this is the body that managed FOIA requests on behalf of the CCG). This is because any information held by the CSU regarding its handling of FOIA requests on behalf of the CCG would be information held by the CSU on behalf of the CCG.

Right of appeal

26. 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

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

27. 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.
28. 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
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