

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2022

Public Authority: NHS Derby and Derbyshire Integrated Care Board (ICB)

Address: Cardinal Square
10 Nottingham Road
Derby DE1 3QT

Decision

1. The Commissioner's decision is that by virtue of section 3(2)(a) of FOIA, the ICB does not hold the requested information about an Enhanced Access Services survey as it holds this information solely on behalf of Primary Care Networks.

Request and response

2. The complainant submitted the following request to the ICB on 27 July 2022:

"The Enhanced Access Survey you were running, closed on Fri 15 Jul 2022. There should have been sufficient time to have downloaded the data from Survey Monkey by now.

As requested on 15 Jun 2022, a copy of the raw data is expected, cleansed of any personally identifiable information. As the removing of personally identifiable information prior to sending reports to the PCNs would be done anyway, this is by no means additional effort. Also as previously requested, I am only interested in the raw data, not receiving any reports which would need to be filtered/produced for the PCNs to use. Again, no additional effort required on the part of Derby NHS.

The effort required is simply the attaching of an excel spreadsheet export from the Survey Monkey service to an email and sending it.

The previously stated reluctance to share the data as requested raises a powerful question, "What are they trying to hide?" I trust that question will be proven to be one which does not need to be asked.

Could you please confirm when the spread sheet of the raw data will be supplied?"

3. The ICB's final position was that it holds the information solely on behalf of another person (the Primary Care Networks) and so does not hold that information itself. The ICB advised the complainant to contact the PCNs directly for the information. It also provided them with a link to the published National Patient Survey which it said incorporates more detail than the survey in this case.

Reasons for decision

4. This reasoning covers whether the ICB can be said to hold the requested information for the purposes of FOIA.
5. As the ICB noted in its correspondence to the complainant, section 3(2) of FOIA states that information is held by a public authority if (a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority.
6. Section 3(2)(a) is relevant here. As it acknowledged to the complainant, the ICB hosted the survey in question and physically holds the related information. However, it noted information being held for the purposes of FOIA is not a purely physical concept.
7. The ICB explained that it holds this information solely on behalf of the Primary Care Networks (PCNs). The ICB said it hosted the survey as the PCNs did not have the appropriate mechanism to host the survey themselves. However, the survey was controlled and administered by the PCNs for their own purposes; the ICB confirmed that it does not and will not use the data for any of its own purposes.
8. In its internal review, the ICB noted the suite of factors the Commissioner has identified in his related published guidance that indicate that information is not held for the purpose of FOIA but is held solely on behalf of another person – the PCNs in this case. The ICB also noted the suite of factors the Commissioner has identified that would indicate that the information is also held by the public authority.

9. Of these factors, the ICB acknowledged that two factors suggested the ICB holds the information for the purposes of FOIA. First, it had borne the (fairly insignificant) cost of conducting the survey as it has an ongoing business account with the survey platform provider. Second, it has an interest in ensuring the PCNs conduct the surveys and an interest in the resulting plans that PCNs produce.
10. But the ICB considered that more of the factors indicated that the ICB is only holding the information solely on the PCNs' behalf:
 - It conducted the survey for those PCNs that do not have the technical ability to produce the surveys themselves.
 - It only conducted the survey on behalf of **some** of the PCNs – PCNs with the ability to do so conducted the survey themselves.
 - It would not have made a difference to the ICB if the PCNs had all conducted the surveys themselves and the ICB had never had any access to any of the raw results.
 - The ICB has no interest in the raw results itself and will not be using the raw data for its own purposes (there is much richer and statistically relevant information available in the National GP Survey).
 - The ICB intends, and has always intended, to delete the raw data from its systems once the PCNs have finished utilising that data as they develop their extended access services (by the end of October 2022).
11. The Commissioner is satisfied that the ICB has thoroughly considered the matter of whether it can be said to hold the requested information itself, for the purposes of FOIA. He has noted the factors that could suggest the ICB holds the information itself, for its own purposes, but he agrees with the ICB that there are more, and more significant, factors that indicate that it does not hold the information because it holds it solely on behalf of the PCNs. The Commissioner has decided that the ICB's response to the request was sound and that, by virtue of section 3(2)(a) of FOIA, it does not hold the requested information for the purposes of the legislation.

Right of appeal

12. 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

13. 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.
14. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF