

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 June 2024

Public Authority: Berkshire Healthcare NHS Foundation Trust
Address: Fitzwilliam House
Skimpedhill Lane
Bracknell
Berkshire RG12 1BQ

Decision (including any steps ordered)

1. The Commissioner's decision is that, on the balance of probabilities, Berkshire Healthcare NHS Foundation Trust ('the Trust') doesn't hold the requested information about a named individual's involvement in decision-making. The Trust complied with section 1(1) of FOIA, and it doesn't need to take any steps.

Request and response

2. The complainant made the following information request to the Trust on 6 October 2023:

"I would like to know how many times [redacted] has been involved in decisions to ask [redacted] members to "step away" from the group..."
3. The Trust explained the named individual's responsibilities and its final position is that it doesn't hold the requested information.

Reasons for decision

4. This reasoning covers whether the Trust holds the information the complainant has requested.
5. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told whether the authority holds the information in recorded form, and to have the information communicated to them if it's held and isn't exempt information.
6. In this case the complainant has requested the number of times a named person has been involved in decisions to ask members to "step away" from a particular group.
7. The complainant considers that the Trust would hold a record of those occasions when someone has been "banned" from the group in question.
8. The Commissioner asked the Trust to provide him with more detail about its position. For example, whether the Trust is certain that it doesn't hold a record of people who've been asked to leave the group and that, if there are instances, there's no record of who was involved in reaching each of those decisions.
9. In a submission to the Commissioner, the Trust confirmed that it doesn't hold a central record of patients that have been asked to have 'Time Away' from the particular group sessions due to 'unsupportive behaviour'. Decisions are recorded in an individual's personal patient notes and will contain the reason the person has been asked to take time away. Any decisions would be made in line with the relevant Policy which, the Trust says, has previously been provided to the complainant.
10. Because there's no central record, the Trust says that it would need to review every individual's confidential patient notes to see if they had been asked to have 'Time Away'.
11. The Trust **could** review every individual's notes to record whether they'd been asked to have 'Time Away.' However, this would only give the number of individuals who'd been asked to have 'Time Away', which isn't what the complainant has requested.
12. The complainant has requested the number of times a named person has been involved in 'Time Away' decisions. The Trust has said that the reason why someone would have been asked to have 'Time Away' would be recorded on that person's notes. But it has confirmed to the Commissioner that the notes wouldn't normally record who'd been involved in that decision because these decisions would be made following a set protocol/process which doesn't differ.

13. The Trust says it wouldn't "normally" record who was involved in the decision-making. If it was recorded at all, it therefore wouldn't be recorded in the notes of all those who'd been asked to have 'Time Away'. The Commissioner is satisfied that the Trust wouldn't be able to address the complainant's request which is for a total number. As such, his decision is that, on the balance of probabilities, the Trust doesn't hold the specific information the complainant has requested and has complied with section 1(1) of FOIA.

Right of appeal

14. 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

15. 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.
16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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