

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 February 2017

**Public Authority:** Robin Lane Medical Centre

**Address:** Robin Lane  
Pudsey  
Leeds LS28 7DE

### Decision (including any steps ordered)

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1. Through six requests, the complainant has requested information from Robin Lane Medical Centre ('the Centre') about its patients. The Centre says that some of the requested information is exempt from disclosure under section 21 of the FOIA as it is already reasonably accessible to the complainant. The Centre refused to comply with the remainder of the requests under section 12 as to do so would exceed the appropriate time and cost limit.
2. The Commissioner finds that the six requests can be aggregated for the purposes of applying section 12 and that section 12(1) applies to all the requests. The Commissioner's decision is that the Centre is not obliged to comply with them. The Commissioner finds, however, that the Centre did not provide the complainant with appropriate advice and assistance in accordance with its obligation under section 16.
3. The Commissioner requires the public authority to take the following step to ensure it complies with the legislation:
  - Provide the complainant with advice and assistance in accordance with the obligation under section 16 of the FOIA.
4. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

5. The Commissioner notes that the Medical Centre itself is not a public authority for the purposes of the FOIA. Rather, each GP within the Centre is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes an information request to a medical centre it is reasonable to expect for convenience that the centre will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. For ease and clarity, this notice refers to 'the Centre' where appropriate in detailing the correspondence and analysis that has taken place.

## Request and response

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6. On 25 August 2015, the complainant wrote to the Centre and requested information in the following terms:

*"1/ the number of patients registered at your GP's practice;*

*2/ the number of patients whose records have had the objection code 9Nu0 entered, following the patient declining their consent to their clinical data being extracted electronically;*

*3/ the number of patients whose records have been coded with 9Nu4 forbidding any of the patient's data, from any NHS source, leaving the Health and Social Care Information Centre (HSCIC);*

*4/ the number of patient subject access requests (Data Protection Act 1998, section 7) received in 2014;*

*5/ fees quoted for subject access requests in 2014;*

*6/ number of patients, to date, who have registered to obtain their medication records online."*

7. The Centre responded on 25 September 2015. It said that the information the complainant requested in request 1 is already publicly available, and provided him with a web link to this information. With regard to requests 2, 3, 5 the Centre said that this information is governed by the Data Protection Act (DPA) and is exempt from disclosure under the FOIA, under section 40(3)(a)(i). With regard to request 4, the Centre said that this information is already in the public domain and exempt from disclosure under section 21 of the FOIA. The Centre did not respond to part 6 of the request.

8. Following an internal review the Centre wrote to the complainant on 29 March 2016. It confirmed that the information requested in request 1 is exempt from disclosure under section 21 of the FOIA as this information is already reasonably accessible to the complainant.
9. With regard to request 2, the Centre said that it does not hold the specific information requested and the FOIA does not oblige it to create the information. The Centre said that this information is also governed by the Data Protection Act (DPA).
10. With regard to request 3 of the request, the Centre said that this information is governed by the DPA, falls outside the scope of the FOIA and that the analysis of the information the complainant has requested does not currently exist. It referred to the exemption under section 40(3)(a)(i) of the FOIA (which concerns third person personal data).
11. With regard to request 4, the Centre said this information is governed by the DPA, is already in the public domain and that section 21 applies.
12. With regard to request 5, the Centre said this information is governed by the DPA and referred to the 40(3)(a)(i) exemption.
13. During the Commissioner's investigation, the Centre withdrew its reliance on section 40(3)(a)(i) with regards to some of the requests. It confirmed that it considers section 21 applies to requests 1 and 5, and that it is not obliged to comply with requests 2, 3, 4 and 6 as complying with these requests would exceed the appropriate time and cost limit under section 12. The Commissioner understands that the Centre has communicated its revised position to the complainant.

## Scope of the case

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14. The complainant contacted the Commissioner on 27 June 2016 to complain about the way his request for information had been handled.
15. The Centre has applied section 12 to requests 2, 3, 4 and 6. The Commissioner's guidance on section 12 explains the following:

*"When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:*

- *made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
  - *made for the same or similar information; and*
  - *received by the public authority within any period of 60 consecutive working days."*
16. The Commissioner notes that the six requests were submitted on the same day and appear to be for broadly related information. The Commissioner therefore considers the six requests can be aggregated for the purposes of applying section 12.
17. As all of the requests would therefore be covered by section 12 of the FOIA, the Commissioner has not considered the Centre's application of section 21 to the remaining two requests; 1 and 5. (She has noted, however, that the Centre has provided the complainant with web links to where this particular information is already published.)
18. The Commissioner's investigation has focussed on whether section 12 can be applied to the six requests. She has also considered whether the Centre met its obligation under section 16 to offer advice and assistance.
19. In 'Other matters' the Commissioner has considered a general point that the Centre raised with her regarding disclosing information.

## Reasons for decision

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### **Section 12 – cost exceeds appropriate limit**

20. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
- (1) either comply with the request in its entirety, or
  - (2) confirm or deny whether the requested information is held.
21. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Centre. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- (a) determine whether it holds the information
  - (b) locate the information, or a document which may contain the information
  - (c) retrieve the information, or a document which may contain the information, and
  - (d) extract the information from a document containing it.
22. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
23. The Centre has explained to the Commissioner that, while it may hold the raw data with regards to requests 2, 3, 4 and 6, existing reports of this information do not exist and that to collate the information the complainant has requested would take in excess of 18 hours.
24. The Centre says that it holds patient information electronically and in paper format. It has acknowledged that it is possible to create an electronic record of the readcodes '9Nu0' and '9Nu4' (requests 2 and 3) and to create an electronic record of the information requested in requests 4 and 6.
25. However, the Centre says that section 12 applies to these parts because, in order to be certain of the accuracy of any electronic report, it would also have to review the paper records of all its patients. The Centre says that this is because when patients register with the Centre, or when patients previously had this information recorded in paper format, this information may not have been summarized in the electronic records.
26. Consequently, the Centre says that it could provide information on: the number of patients with the stated readcodes; subject access requests; and registrations to obtain medical records online, retrieved from the patients' electronic records. It would not, however, be the *actual* number of patients, given that records are held in electronic and paper format. The Centre considers that section 12 applies because in order to provide an accurate and complete figure, it would need to review each patient record in its entirety.
27. The Centre has told the Commissioner that it holds 13,462 patient medical records in paper format. The Centre says that if it was to take one minute to review each record (as a minimum), it would take approximately 224 hours to respond to the above four requests.

28. As discussed above, the Commissioner is satisfied that the six requests can be aggregated for the purposes of applying section 12. The Commissioner has considered the Centre's submission; the way it holds patient records and the number of records involved. She considers that one minute per record review is a reasonable estimate.
29. The Commissioner is satisfied that section 12 of the FOIA can be applied to the six requests. The Commissioner notes that requests 2 and 3 refer to 'readcodes'. Her understanding is that readcodes would only apply to electronic records and that, in theory, it might therefore be possible to comply with requests 2 and 3 within the cost limit. However, it would exceed the appropriate limit to comply with requests 4 and 6 and, because the six requests have been aggregated, the Centre is not obliged to comply with these requests or requests 1, 2, 3 and 5.

### **Section 16 – advice and assistance**

30. Under section 16 of the FOIA the Centre is obliged to provide the complainant with advice and assistance, where reasonable, to help the complainant refine the request so as to bring it within the cost limit, or to explain why this would not be possible.
31. It therefore appears to the Commissioner that the Centre has not given the complainant appropriate advice and assistance as to how he might refine his requests. For example, the Commissioner has noted the Centre's argument at paragraph 26. If it is possible to do so, it *may* be that the complainant is prepared to accept figures from electronic records only, on the understanding that these figures may not be accurate.
32. The Commissioner therefore considers that the Centre has not complied with its obligations under section 16 in this case.

### **Other matters**

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33. Two of the requests submitted in this case concern the number of patients with 'readcodes' on their electronic records indicating that they do not want their data to be disclosed under the FOIA. During the Commissioner's investigation, the Centre had queried to what extent it should take patients' views into account when deciding whether to disclose the requested information.
34. Patients' views do not override the FOIA. All information held by a public authority must be considered for disclosure under the FOIA regardless of objections made by individuals, and may not be withheld unless a relevant exemption applies.
35. However, patients' objections may well be relevant when considering particular exemptions. Relevant exemptions may be at section 40 (2) of the FOIA, which concerns personal data of third persons, and section 41 which concerns information provided in confidence. Guidance on both these sections is available on the Commissioner's website.

## Right of appeal

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36. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**