# Freedom of Information Act 2000 (FOIA)

## Decision notice

**Date:** 28 October 2020

**Public Authority:** Pennine Care NHS Foundation Trust
**Address:** 225 Old Street
Ashton-under-Lyne
Lancashire
OL6 7SR

### Decision (including any steps ordered)

1. The complainant has requested from Pennine Care NHS Foundation Trust (the "Trust") information about aspects of its mental health treatment services. The Trust refused to provide the requested information citing section 14(1) of the FOIA, that the request was vexatious and that responding to it would be a grossly oppressive burden.

2. The Commissioner's decision is that the Trust was not entitled to rely on section 14(1) to refuse the request.

3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.

    - Issue a fresh response to the request which does not rely on section 14(1) of the FOIA.

4. The public authority must take these steps 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.

## Request and response

5. On 16 April 2020 the complainant made a request for information under the FOIA which is reproduced in an annex at the end of this decision notice, due to its length.

6. The Trust wrote to the complainant on 17 April 2020 stating that it was considering citing section 14(1) but giving her the opportunity to significantly reduce her request.

7. The complainant responded on the same day wanting all her questions answering.

8. On 20 April 2020 the Trust sent a refusal notice citing section 14(1) – vexatious request. The complainant made a review request on the same day.

9. On 30 April 2020 the Trust asked what the complainant wanted reviewing.

10. The complainant sent a chaser email on 1 June 2020 from which the Trust understood that she believed that the information should already be held and that the request was not a burden for that reason.

11. The Trust provided an internal review on 11 June 2020 in which it maintained its original position that section 14(1) applied. The Trust also suggested that many of the questions required clarification.

## Scope of the case

12. The complainant contacted the Commissioner on 12 June 2020 to complain about the way her request for information had been handled.

13. The Commissioner considers the scope of this case to be the Trust's citing of section 14(1).

## Reasons for decision

14. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

15. The FOIA does not define the term "vexatious". The Upper Tribunal (UT) considered the issue of vexatious requests in *The Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC),* (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a *"…manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.

16. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as being -

    *"…concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)…The purpose of Section 14…must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA…"* (paragraph 10).

17. In circumstances where the concern of a public authority is about the burden of a request, it will generally cite section 12(1) FOIA. Under section 12(1) a public authority is not obliged to comply with a request where the cost of doing so would exceed the appropriate limit set by legislation. However, section 12(1) cannot be used for the cost and effort associated with considering exemptions or redacting exempt information. Where a public authority can make a case that the time taken to review and redact the requested information would impose a grossly oppressive burden, it can apply section 14(1).

18. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:

    - The requester has asked for a substantial volume of information **AND**
    - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**
    - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

## The Trust's view

19. The Trust explained to the Commissioner that it had considered the application of section 12 at the time of the original response and considered it again before responding to the investigation. Its decision not to do so was based on the unwillingness of the complainant to work with the Trust in revising the request, despite being informed of the limitations that the Trust was experiencing due to the nature and state of the information, how it is held, and the fact that resources were limited due to the Trust's pandemic response. Having reviewed the case file, the Trust's opinion is that section 14 is engaged on the grounds of the request being a grossly oppressive burden.

20. This opinion was based on the volume of information requested and the work that would be required to comply with it. In order to comply, the Trust would need to review and clarify the request which is made up of 110 questions. There are a number of questions that would require "*refinement*". To do this, the FOI lead would need to review each question, explain what clarification was needed and advise what the Trust may hold that could assist. For some questions other business ares in the Trust would need to be liaised with and these areas are already subject to reduced staffing and additional duties/pressure as a result of the COVID-19 crisis.

21. The internal review provided examples from a fifth (22 questions) of the questions asked and outlined for the complainant the clarification that would be needed, if the request was to be progressed. The Trust stated in its refusal notice and to the Commissioner that it would also need to do the following -

- Confirm what information is held for the 110 questions. To do this the FOI Lead would need to approach a number of business and clinical areas across the Trust, many of which are already subject to reduced staffing and additional duties/pressure as a result of the COVID-19 public health crisis.

- From the information held, establish which questions would take in excess of 18 hours to answer – individually and collectively, and identify which would require a review of individual patient records to ascertain the information.

- Establish what the Trust could potentially provide from the information that would take in excess of 18 hours to assist the complainant, in line with its duty to provide section 16 advice and assistance. This would require consultation with already stretched

business areas.

- Draft a response, addressing each of the 110 questions, advising what the Trust could provide in less than 18 hours, what it can't, and what it could provide instead.

22. The complainant was advised by the Trust, as part of what it describes as its section 16 responsibilities, that it was considering refusing the request. As part of that communication it provided the opportunity for the complainant to refine her request or outline why she believed that the full request was in the public interest. However, the complainant maintained that she required responses to all the questions asked.

23. Finally, the Trust's view is that the request and the refusal to consider amending it, represents a manifestly unreasonable burden on the organisation at any time. This is compounded by the fact that the request would be likely to have a number of points of refusal under section 12 as being beyond the fees limit. It reiterated that the Trust's ability to respond was hampered by the current public health crisis. Despite this, the Trust remains open to working with the complainant on a revised and achievable request.

**The complainant's view**

24. The complainant considers that if the requested information is not being gathered there is a problem and that this information has been provided by other Trusts. She questions whether the Trust thinks these issues are important and whether it wishes to work collaboratively. The complainant believes that the requested information would be useful at this time and that the information should already have been collected, in which case the cost would be minimal.

**The Commissioner's view**

25. The Commissioner accepts that there are cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. The Trust believes that to be the case here.

26. However, the Commissioner considers that the high threshold for refusing a request on such grounds has not been reached. The Trust has not provided enough detail to the Commissioner for her to determine whether the request is a grossly oppressive burden. Her view is that the request is very lengthy but that the Trust's response to the complainant and the Commissioner sits between two different exemptions – section

12 and section 14. In order to prove a grossly oppressive burden the Trust needed to provide more detail concerning redaction and the application of exemptions which are not allowed as part of the permitted activities for consideration under section 12. Without these details, the Trust's arguments rely on section 12 which it has not applied. Therefore the Trust is now required to issue a response to the complainant that does not rely on section 14(1).

## Other matters

27. Finally, the Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. However, the legislation does not permit any consideration to be made of these circumstances.

## Right of appeal

28. 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

29. 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.

30. 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**

## Annex

**Information request – 16 April 2020**

"Please provide ECT information under the FOI act to the following questions : -
*1. Please supply patient's information ECT leaflet.*
*2. Please supply patient ECT consent form.*
*3. Please supply any ECT reports/investigations*
*4. How many ECT in 2019?*
*5. What proportion of patients were men/women?*
*6. How old were they? 7. What were the diagnoses and in what proportions?*
*8. What proportion of patients were classified BAME?*
*9. How many were receiving ECT for the first time?*
*10. How many patients consented to ECT?*
*11. How many ECT complaints were investigated outside the NHS and CCG?*
*12. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?*
*13. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?*
*14. How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?*
*15. How many patients have suffered complications during and after ECT and what were those complications?*
*16. Have there been any formal complaints from patients/relatives about ECT?*
*17. If so, what was their concerns?*
*18. How many patients report memory loss/loss of cognitive function?*
*19. What tests are used to assess memory loss/loss of cognitive function?*
*20. Have MRI or CT scans been used before and after ECT?*
*21. If so what was the conclusion?*
*22. How does the Trust plan to prevent ECT in the future?*

Please provide SERIOUS INCIDENT information under the FOI act to the following questions: -
*1. Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.*
*2. Please supply patient SERIOUS INCIDENT REPORTS consent form.*
*3. Please supply any serious incident reports/investigations*
*4. How many SERIOUS INCIDENT REPORTS in 2019?*
*5. What proportion of patients were men/women?*
*6. How old were they?*
*7. What were the diagnoses and in what proportions?*
*8. What proportion of patients were classified BAME?*
*9. How many were receiving SERIOUS INCIDENT REPORTS for the first time?*
*10. How many patients consented to SERIOUS INCIDENT REPORTS?*
*11. How many SERIUOS INCIDENT REPORTS were investigated outside the NHS and CCG?*

*12. How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
*13. How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
*14. How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?*
*15. How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?*
*16. Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?*
*17. If so, what was their concerns?*
*18. How many patients report memory loss/loss of cognitive function? 19. What tests are used to assess memory loss/loss of cognitive function?*
*20. Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?*
*21. If so what was the conclusion?*
*22. How does the Trust plan to prevent SERIOUS INCIDENTS in the future?*

Please provide restraints information under the FOI act to the following questions: -
*1. Please supply RESTRAINTS patient's information leaflet.*
*2. Please supply patient RESTRAINTS consent form.*
*3. Please supply any Restraints/investigations*
*4. How many RESTRAINTS in 2019?*
*5. What proportion of patients were men/women?*
*6. How old were they?*
*7. What were the diagnoses and in what proportions?*
*8. What proportion of patients were classified BAME?*
*9. How many were receiving RESTRAINTS for the first time?*
*10. How many patients consented to RESTRAINTS?*
*11. How many RESTRAINTS were investigated outside the NHS and CCG ?*
*12. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?*
*13. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?*
*14. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)? 15. How many patients have suffered complications during and after RESTRAINTS and what were those complications?*
*16. Have there been any formal complaints from patients/relatives about RESTRAINTS?*
*17. If so, what was their concerns?*
*18. How many patients report memory loss/loss of cognitive function?*
*19. What tests are used to assess memory loss/loss of cognitive function?*
*20. Have MRI or CT scans been used before and after RESTRAINTS?*

*21. If so what was the conclusion?*
*22. How does the Trust plan to reduce restraints in the future?*

Please provide SECLUSION information under the FOI act to the following questions: -
*1. Please supply patient's information SECLUSION leaflet.*
*2. Please supply patient SECLUSION consent form.*
*3. Please supply any SECLUSION reports/investigations*
*4. How many SECLUSION in 2019?*
*5. What proportion of patients were men/women?*
*6. How old were they?*
*7. What were the diagnoses and in what proportions?*
*8. What proportion of patients were classified BAME?*
*9. How many were receiving SECLUSION for the first time?*
*10. How many patients consented to SECLUSION? 11. How many SECLUSIONS were investigated outside the NHS and CCG ?*
*12. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?*
*13. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?*
*14. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?*
*15. How many patients have suffered complications during and after SECLUSION and what were those complications?*
*16. Have there been any formal complaints from patients/relatives about SECLUSION?*
*17. If so, what was their concerns?*
*18. How many patients report memory loss/loss of cognitive function?*
*19. What tests are used to assess memory loss/loss of cognitive function?*
*20. Have MRI or CT scans been used before and after SECLUSION?*
*21. If so what was the conclusion?*
*22. How does the Trust plan to prevent SECLUSION in the future?*

Please provide MEDICATION ERRORS information under the FOI act to the following questions: -
*1. Please supply patient's information MEDICATION ERRORS leaflet.*
*2. Please supply patient MEDICATION ERRORS consent form.*
*3. Please supply any MEDICATION ERRORS reports/investigations*
*4. How many MEDICATION ERRORS in 2019?*
*5. What proportion of patients were men/women? 6. How old were they?*
*7. What were the diagnoses and in what proportions?*
*8. What proportion of patients were classified BAME?*
*9. How many were receiving MEDICATION ERRORS for the first time?*
*10. How many patients consented to MEDICATION ERRORS?*
*11. How many MEDICATION ERRORS S were investigated outside the NHS and CCG?*

*12. How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?*
*13. How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?*
*14. How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?*
*15. How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?*
*16. Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?*
*17. If so, what was their concerns?*
*18. How many patients report memory loss/loss of cognitive function?*
*19. What tests are used to assess memory loss/loss of cognitive function?*
*20. Have MRI or CT scans been used before and after MEDICATION ERRORS?*
*21. If so what was the conclusion?*
*22. How does the Trust plan to prevent MEDICATION ERRORS in the future"*