Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

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

Complainant:
Address:

Decision (including any steps ordered)

1. The complainant has requested information relating to medication errors, seclusion, the use of restraints, serious incidents and the use of electroconvulsive therapy (ECT) within the Trust for the year 2019.

2. The Trust disclosed five data sets, compiled for each of the topics in question, in response to the request. It refused the remainder of the request citing section 12(1) (Cost of compliance exceeds the appropriate limit) of the FOIA.

3. The Commissioner's decision is that the Trust is entitled to rely on section 12(1) of the FOIA.

4. The Commissioner does not require the public authority to take any further steps to ensure compliance with the legislation.

Request and response

5. On 16 April 2020, the complainant wrote to the Trust and submitted a series of requests for information in one single piece of correspondence. This correspondence comprised of 110 separate questions. Given the requests' length, they are provided in the Appendix to this notice.

6. The Trust responded on 15 June 2020. It disclosed five datasets relating to medication errors, seclusion, the use of restraints, serious incidents and the use of ECT. The Trust refused the remainder of the request cited section 12(1) of the FOIA.

7. Following an internal review the Trust wrote to the complainant on 8 August 2020. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 14 August 2020 to complain about the way their request for information had been handled.

9. The Commissioner therefore considers the scope of her investigation to be to determine whether the Trust has correctly estimated that responding to the request in its entirety would exceed the appropriate cost limit as set out in section 12(1) of the FOIA.

Reasons for decision

10. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the costs of complying with the request would exceed the appropriate limit – 18 hours for a public authority such as the Trust.

11. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:

    (a) 'determining whether it holds the information,

    (b) locating the information, or a document which may contain the information,

    (c) retrieving the information, or a document which may contain the information, and

    (d) extracting the information from a document containing it.'

12. In its response of 15 June 2020, the Trust provided the complainant with a breakdown of the hours it had spent on this request to produce the datasets in question, endeavouring to answer as many of the complainant's individual questions as possible. The breakdown is laid out below:

FOI Officer	6 hours 15 minutes
Datix	30 minutes
Information Management & Technology (2 staff) 1 @ 1 @	 30 minutes 3 Hours 15 minutes
Patient Safety & Compliance Team (2 staff) 1 @ 1 @	 1 hours 45 minutes 2 hours 15 minutes
Pharmacy Department	30 minutes
Personal Safety Lead	30 minutes
Interim Deputy Director of Nursing	2 hours
Complaints Department	30 minutes

13. The Trust explained that to answer the remainder of the complainant's questions would require a manual trawl from a clinician and to do so would exceed the 18 hours already spent locating, retrieving and extracting relevant information in an effort to comply with the complainant's request.

14. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so. For more information, see paragraph 28 onwards of the Commissioner's guidance costs of compliance exceeds appropriate limit.[1]

15. The Trust has confirmed that 1182 patients were admitted to its hospitals in 2019. The Trust has provided the following breakdown to the Commissioner in relation to the time it would take to provide the complete response to the complainant's request for information.

[1] costs_of_compliance_exceeds_appropriate_limit.pdf (ico.org.uk)

Restraints

16. The complainant has requested information including statistics relating to age, gender, ethnicity and diagnosis of patients who were restrained in hospital. The Trust has explained that older patients are rarely restrained and of the total 1182 patients admitted, it estimated there would be 800 patient records to manually review to gather the statistics in question.

17. The Trust has estimated that it would take an hour to manually review each file with a view to answering all of the complainant's questions relating to restraints.

18. The Trust has therefore determined that it would take 800 hours to provide the complete response to the complainant's request for information on the subject of restraints.

Serious incidents

19. The complainant has requested information including statistics relating to age, gender, ethnicity and diagnosis of patients who were involved in serious incidents. The Trust has explained that the complainant has used, as part of their request for information, terms and parameters that are not recognised within the Trust's systems. The Trust has explained that it would need to seek clarity from the complainant relating to the terms and parameters used in their request.

20. The Trust has also explained that, in order to identify the diagnosis for each patient who was involved in a serious incident, it would need to cross reference the individual case notes for each patient with diagnostic information held on the electronic patient record system, RIO.

21. The Trust has estimated that it would take half an hour to do so per patient. For the 1182 patients admitted in 2019, it would take approximately 60 hours to provide the complete response to the complainant's request for information on the subject of serious incidents.

The Commissioner's decision

22. The Trust has explained that it has already carried out 18 hours of work on this request. The Commissioner is of the view that, even if this is not the true figure, or this figure included impermissible activities, there remains so much work to be done to respond to the request in its entirety that to do so would take the Trust drastically over 18 hours.

23. The Commissioner is satisfied therefore that, to provide the complete response to the complainant's request for information relating to

restraints and serious incidents would take approximately 860 hours. Even if the process of locating, retrieving and extracting relevant information were to be made doubly efficient, it would still take the Trust approximately 420 hours. This figure exceeds the limit referred to within section 12 of the FOIA – 18 hours.

24. The Commissioner therefore accepts the Trust's explanation relating to the time it would take to provide the complete response to the complainant's request for information on the subjects of serious incidents and restraints.

25. Since the Commissioner considers the appropriate cost limit has already been drastically exceeded, she does not consider it necessary to consider the Trust's estimates relating to medication errors, seclusion and ECT. Although she considers it self-evident that these elements would further add to the burden of responding to this request in its entirety.

26. Having considered the Trust's submission, the Commissioner is of the opinion that the authority is entitled to rely on section 12(1) of the FOIA.

Section 16 – advice and assistance

27. When considering a request for information under the FOIA, a public authority has a duty to provide advice and assistance to the requestor:

    (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

    (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

28. Paragraph 2.10 of the section 45 Code of Practice states:

    'Where it is estimated the cost of answering a request would exceed the 'cost limit' beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit.'

29. In addition, paragraph 6.9 states that 'public authorities should consider what advice and assistance can be provided to help the applicant

reframe or refocus their request with a view to bringing it within the cost limit'.

30. The Trust has not provided the complainant with advice on how to narrow the scope of their request so that it may fall within the cost limits referred to within paragraph 11. However, the Commissioner is satisfied that the Trust could not have reasonably been expected to provide advice and assistance to the complainant, given the breadth and sheer amount of information requested in this instance. Therefore, the Commissioner is of the opinion that no breach of section 16(1) of the FOIA has occurred, though she notes that the Trust should have explained to the complainant in this instance that there was no advice and assistance that it could have reasonably been expected to provide.

Other matters

31. The work that the Trust has undertaken to process the complainant's request is referred to within paragraph 12. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so.

32. The Trust has disclosed in response to this request the information that fell within the cost limit to provide. However, the Trust may wish to, where it can be reasonably expected to do so, advise a requestor of ways in which to narrow the scope of the request so that it may fall within the cost limits. In doing so, the requestor will have the opportunity to specify the information included within their request which is of the most importance to them to receive; an opportunity which was removed from the complainant in the Trust's handling of this request.

Right of appeal

33. 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

34. 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.

35. 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 1

The complainant set out their request for information in the following terms:

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