

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2012

Public Authority: Barts and The London NHS Trust
Address: 56/57 Ashfield Street,
The Royal London Hospital, Whitechapel,
London, E1 2BL

Decision (including any steps ordered)

1. The complainant has requested information relating to isolated mitral valve repair and replacement surgery.
2. The Commissioner's decision is that Barts and The London NHS Trust (the Trust) has correctly relied on section 12 of the FOIA for refusing to provide the requested information.
3. The Commissioner does not require the Trust to take any further steps.

Request and response

4. On 28 February 2012, the complainant wrote to the Trust and requested information in the following terms:
 - a) *The number of isolated mitral valve repair and replacements performed in the last 3 years within the trust. Please break this down by year and by site if possible. Please indicate how many are 1st attempt surgeries and how many are "redos".*
 - b) *The number of such operations that resulted in mitral valve repair and the number that resulted in mitral valve replacement. Please break this down by year and by site if possible.*
 - c) *The overall survival rate for these operations. Please break this down by year and by site if possible.*

d) The "expected rate of survival" for the patients that were operated on. One way you may have this data is using the logistic EuroSCORE model with a UK adjustment as may have been provided to the Care Quality Commission for example in relation to general cardiac surgery. Please break this down by year and by site if possible.

*e) The mean *and* median postoperative lengths of stay within hospital for these operations. If possible please indicate when patients have been released to another hospital rather than to the community.*

f) The number of emergency readmissions within 28 days of being released from the hospital following surgery.

g) The permanent stroke rate for the group of patients undergoing isolated mitral valve repair/replacement. Please break this down by year and site if possible.

h) The number needing CVVHF for the group of patients undergoing isolated mitral valve repair/replacement. Please break this down by year and site if possible.

i) The same data as requested in parts a-h above but this time broken down by individual named surgeon. Please break this down by year and by site if possible.

j) The names of the surgeons at the trust who performed mitral valve surgery during the last three years, if not provided above.

k) The trust's working definition for "survival rate". E.g. the number of days post surgery it covers and any other relevant factors.

l) Any other mortality or surgical quality information or indicators the trust holds in relation to mitral valve repair and replacement carried out within the trust over the last 3 years.

When considering this request, and in particular parts i) and j), please bear in mind that considerable surgeon specific data is already available at <http://heartsurgery.cqc.org.uk/> for the period up to 2009 (although not in relation mitral valve surgery specifically) . The publication of this existing data indicates that cardiothoracic surgeons now have a reasonable expectation that their individual surgical results will be made public.

5. The Trust responded on 15 March 2012. It provided some of the information requested, but stated that the cost of providing the remainder would exceed the appropriate limit.
6. The complainant refined his request by asking it to only consider his full request to the 140 cases identified by the Business Intelligence Unit as involving the mitral valve rather than the 769 cases involving valve procedures in the last three years, however the Trust maintained it would still exceed the appropriate limit to provide this information.
7. The complainant sought clarification from the Trust regarding the amount of time estimated, as to whether this was an estimate of 10 minutes per potential patient of relevance to answer all parts of his request, or whether any part could be answered more quickly.
8. On 20 March 2012, the Trust's FOI Team contacted the Business Intelligence Unit (BIU) to ask them to examine whether any parts of the request could be answered within the appropriate limit.
9. On 21 March 2012, the Cardiac Lead Consultant informed the FOI Team that some of the requested information may be available within the appropriate limit from the Cardiac Audit Office (CAO).
10. On 27 March 2012 the FOI Team was provided with further information by CAO detailing the name of the surgeon, type of mitral operation and death data; it was confirmed that this was the only information that could be provided within the appropriate limit.
11. This information was sent to the complainant on 4 April 2012.
12. On 14 May 2012 the CAO forwarded further information to the FOI Team detailing Logistic EuroSCORE for isolated mitral valve repair and replacements performed in the last 3 years at the Trust.
13. This information was sent to the complainant on 16 May 2012. Following an internal review the Trust wrote to the complainant on 30 May 2012. It maintained its original position that it would exceed 2.5 working days and the appropriate limit to provide any further information in response to the request.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
15. The Commissioner considers that the scope of this case is to determine if the Trust has correctly engaged section 12 of the FOIA to the complainant's refined request.

Reasons for decision

16. Section 12(1) provides that a public authority is not obliged to comply with a request if the cost of doing so would exceed the appropriate cost limit. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government bodies and £450 for other public authorities. The fees regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 18 hours.
17. The tasks that can be taken into account when calculating a fees estimate are specified in the fees regulations as follows:
 - Determining whether the requested information is held.
 - Locating that information.
 - Retrieving the information.
 - Extracting the information.
18. The task for the Commissioner is to consider whether the Trust has made a reasonable estimate of the cost of complying with the complainant's request. If it was reasonable for the Trust to estimate that the time spent on the request would exceed 18 hours, section 12(1) will apply and the Trust was not obliged to comply with this request.
19. In its submissions to the Commissioner the Trust stated that it had re-examined how this request had been handled. It had been noticed that, whilst the summary of data provided by the BIU was provided to the complainant in the original response, a detailed breakdown of the data was not provided. This was sent to the complainant on 5 October 2012 and the Trust believes that this will contribute to an answer to part l) of the request. It further stated that a response to part k) of the request has also been provided in the same correspondence.

20. The Commissioner is satisfied that a response has been provided to parts a-d and i-l of the request.
21. The Trust went on to explain that in order provide a response to parts e-h of the request it would need to manually search 140 files.
22. The Trust stated that to provide robust evidence that the use of section 12 in response to this request was appropriate it had undertaken a sampling exercise.
23. This was undertaken on a randomly selected patient file and involved retrieving the data requested. The sampling exercise was undertaken by a junior doctor, supervised by the Cardiac Lead Consultant. The time taken to retrieve the requested information from one patient file was between 30-40 minutes. This did not include the time taken to physically retrieve the notes.
24. In addition to this, the Trust stated that the BIU have rechecked the information they supplied and have worked with the CAO to ensure that they have provided everything they can from Trust databases in response to the request. It confirmed that it was unable to provide any further information.
25. The Trust stated that in order to provide any further information in response to the request it would need to physically retrieve the notes for 140 files. It would then need to manually search each file and record the information. Based on the sampling exercise undertaken it would take 30-40 minutes x 140 files = 70-93 hours. This does not include the time taken to retrieve the files, only the time to search and record the requested information.
26. Having considered the representations of the Trust, the Commissioner is satisfied that it has correctly applied section 12(1) of the FOIA. It has undertaken a sampling exercise which demonstrates that it would exceed the appropriate limit of 18 hours to provide the information requested.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF