

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2017

Public Authority: Wigan Borough Clinical Commissioning Group

Address: Wigan Life Centre
College Avenue
Wigan WN1 1NJ

Decision (including any steps ordered)

1. The complainant has requested information from Wigan Borough Clinical Commissioning Group ('the CCG') about the data controller for Ashton, Leigh and Wigan Primary Care Trust during 2009. The CCG's position is that it does not hold this information.
2. The Commissioner's decision is that the CCG has complied with its obligations under section 1(1)(a) and section 1(1)(b) of the FOIA. She considers that the CCG confirmed to the complainant that it does not hold the information he has requested, and she is satisfied that the information is not held.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 18 July 2016, the complainant wrote to the CCG and requested information in the following terms:

"Please inform me whether or not you hold the information specified below.

If you do hold the requested information please send me a copy.

I am requesting copy of information you hold which states who is the data controller for the personal data processed by Ashton, Leigh and Wigan Primary Care Trust (ALWPCT) during their handling of service user's complaints made to ALWPCT from the 01st April 2009."

5. On behalf of the CCG, Greater Manchester Commissioning Support Unit (GMCSU) responded on 19 July 2016. It said that the CCG does not hold information prior to its inception in 2013. The CCG provided a web link to 'NHS England', which it said holds all legacy information.
6. On 20 July 2016, the complainant requested an internal review. On 21 July 2016 GMCSU informed the complainant that there was no need to carry out an internal review as it had responded to his request. In this correspondence GMCSU referred to its response of 19 July 2016 in which it had said that the CCG *"does not hold information prior to their [CCGs] inception in April 2013"*. GMCSU explained to the complainant that this was because Ashton, Leigh and Wigan PCT ceased to exist in 2013 and the information the complainant had requested concerned complaints from 2009 ie prior to 2013 and before Wigan Borough CCG existed. GMCSU finished this correspondence by confirming to the complainant that it holds none of the information that he had requested.
7. Further correspondence followed and on 27 July 2016 GMCSU confirmed to the complainant that it *had* responded to his request for an internal review and the CCG *had* denied that it holds the information the complainant has requested.
8. In correspondence dated 28 July 2017, GMCSU again confirmed to the complainant that the CCG does not hold the information he has requested. GMCSU also told the complainant that it was not necessary to undertake an internal review for the purposes of obtaining confirmation or denial that the CCG holds the information. It suggested that the complainant contact NHS England to obtain the information he is seeking.
9. The complainant remained dissatisfied with the response and further correspondence followed during 28 July 2016. On 1 August 2016, in a document titled 'Internal Review Response' GMCSU informed the complainant that the data controller for Ashton, Leigh & Wigan PCT is NHS England.

Scope of the case

10. The complainant contacted the Commissioner on 19 August 2016 to complain about the way his request for information had been handled. The complainant is concerned that GMCSU (on behalf of the CCG) failed to confirm or deny it holds the requested information, and deliberately delayed or prevented him from receiving the information he requested ie that it holds relevant information that it has not released. The complainant is also dissatisfied with GMCSU's handling of the internal review process.
11. The Commissioner's investigation has focussed on whether GMCSU complied with its obligations under section 1(1) of the FOIA. In 'Other matters' the Commissioner has considered GMCSU's internal review.

Reasons for decision

Section 1 – general right of access to information

12. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the requested information and (b) to have the information communicated to him or her if it is held.
13. The Commissioner has first considered whether GMCSU complied with its obligation under section 1(1)(a) to confirm whether or not it holds the requested information. The Commissioner has noted that in his initial request the complainant had specifically asked the CCG to confirm whether or not it held the information.
14. The Commissioner has reviewed the responses that GMCSU provided to the complainant. In its initial response on 19 July 2016, GMCSU says simply that the CCG *"does not hold information prior to their inception in April 2013..."*
15. GMCSU's response of 20 July 2016 states – *"I confirm that the Data Controller for Ashton Leigh & Wigan PCT is NHS England"*. This correspondence appears to indicate who may hold relevant information but, again, this response does not make it absolutely clear that the CCG does not hold the specific information the complainant has requested.
16. However, in its further response of 21 July 2016, GMCSU confirmed that it holds none of the information that the complainant has requested.

17. In the course of its correspondence with the complainant on 28 July 2016 however, GMCSU tells the complainant that it is not necessary to confirm or deny that the CCG holds the requested information because it has actually given the information to him – namely that the data controller is NHS England.
18. In the Commissioner's view, GMCSU's responses are somewhat muddled. A response that appears to meet the requirement of section 1(1)(a) of the FOIA is provided on 21 July 2016 when GMCSU told the complainant that the CCG does not hold the information he has requested; that is, recorded information that states who the data controller is for Ashton, Leigh and Wigan PCT at a particular time. GMCSU confirmed again in its correspondence of 27 and 28 July 2016 that this information is not held. However, in its internal review of 1 August 2016, GMCSU told the complainant that the data controller is NHS England.
19. The Commissioner understands that GMCSU's position is that it does not hold, in recorded form, information that states who the data controller is for Ashton, Leigh and Wigan PCT in 2009. On 1 August 2016 it appears to have confirmed that NHS England is the data controller. Because its position up until then had been that it does not hold relevant information, the Commissioner assumes that GMCSU has provided the name of NHS England outside of the FOIA and as part of its normal course of business/customer service.
20. Having reviewed all the correspondence, the Commissioner's opinion is that GMCSU's handling of the complainant's request was generally clumsy and unclear. However, it appears to the Commissioner that GMCSU did finally confirm on 21 July 2016 (and 27 and 28 July 2016) that the requested information was not held. The Commissioner is therefore prepared to accept, on this occasion, that the CCG did not breach section 1(1)(a) of the FOIA. As discussed above, the Commissioner assumes that when GMCSU then formally provided the complainant with the name of NHS England, on 1 August 2016, it did this outside of the FOIA.
21. The Commissioner has gone on to consider whether the GMCSU has complied with its obligation under section 1(1)(b) to release the requested information if it is held.
22. The CCG has explained to the Commissioner that PCTs expired in April 2013 and CCGs came into being. Records relating to PCTs transferred to NHS England. As such the CCG has confirmed that it does not hold the information the complainant has requested. This is because the requested information concerns a particular PCT and the time period 2009. This information, if held, would now be held by NHS England.

23. The complainant disputes the CCG does not hold information relating to PCTs before 2013. This is because in response to a subject access request (SAR) he submitted to the CCG in 2013, he received a file note concerning Ashton, Leigh and Wigan PCT dated September 2013.
24. The CCG has explained to the Commissioner that the process of transitioning all PCT paper and electronic records to NHS England took approximately one year. At the point that the complainant submitted his SAR in 2013 it did therefore still hold some information concerning Ashton, Leigh and Wigan PCT which it was able to provide to the complainant at that point. GMCSU has confirmed that it no longer holds any PCT legacy information and that this is all held by NHS England.
25. The Commissioner accepts that at July 2016 the CCG did not hold general legacy information relating to PCTs prior to April 2013 and that this is now held by NHS England. In the circumstances, she is also prepared to accept, on the balance of probabilities, that the CCG does not hold, in recorded form, the specific information requested by the complainant; that is information which states who the data controller is for Ashton, Leigh and Wigan PCT during 2009. The Commissioner is therefore satisfied that the CCG has complied with section 1(1)(b) of the FOIA.
26. GMCSU has indicated to the complainant, outside of the FOIA, that NHS England is the relevant data controller and has advised the complainant to contact that organisation for the information he may be seeking.
27. In the interests of clarity, and so as to avoid unnecessary correspondence with an applicant, the Commissioner reminds GMCSU of its two obligations under section 1(1). In cases when an authority has confirmed that it does not hold requested information in recorded form but can nonetheless pass on relevant information – such as the name of NHS England in this case – the authority might want to make it clear that it is providing this information outside of the FOIA and as part of its normal course of business.

Other Matters

28. The provision of an internal review is not a requirement of the FOIA and therefore GMCSU handling of the internal review process on behalf of the CCG has not been included within the Commissioner's formal investigation.
29. The Commissioner recommends that public authorities undertake internal reviews as a matter of good practice. Authorities should treat a suggestion from the applicant that they are dissatisfied with the

response that an authority has provided, as a request for an internal review.

30. In this case, in its correspondence with the complainant dated 21 July 2016 and 28 July 2016, GMCSU indicated that it was not necessary to provide a review as its position was that it does not hold the requested information.
31. The fact that an authority's initial position is that it does not hold relevant information does not exclude the authority from carrying out a review. A review provides an opportunity to: reconsider the request and the response; address the applicant's concerns; and satisfy itself that its response was appropriate.
32. GMCSU did go on to provide the complainant with an internal review on 1 August 2016. While this was well within the timescale that the Commissioner recommends, she considers there were shortcomings in the review response.
33. The complainant's primary concern, which he expressed on 20 July 2016 when he requested an internal review, was that GMCSU had not confirmed whether or not it holds relevant information. This is a valid concern. In subsequent correspondence with the complainant during July 2016, GMCSU confirmed that it does not hold the information but erroneously did not categorise any of this correspondence as an internal review.
34. When it did provide a formal internal review on 1 August 2016, GMCSU informed the complainant that the relevant data controller is NHS England. It did not address the complainant's primary concern – and other concerns that had materialised during the correspondence that had followed from 20 July to 28 July 2016.
35. The Commissioner considers that GMCSU had the opportunity on 21 July 2016 to undertake and provide an internal review that addressed the complainant's concern: that is, it could have clearly confirmed that it does not hold in recorded form the specific information requested concerning Ashton, Leigh and Wigan PCT (if, having reviewed the matter it found this still to be the case). GMCSU could have then explained that it could, however, provide the name of 'NHS England' and it was doing this outside of the FOIA and as part of its normal course of business. If the complainant had remained dissatisfied following such an internal review, he could have been directed to the Information Commissioner at that point.
36. This approach may have avoided the need for further correspondence on the matter during July and into August 2016.

Right of appeal

37. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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
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