

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

Public Authority: West Midlands Ambulance Service
Address: Waterfront Business Park
Waterfront Way
Brierley Hill DY5 1LX

Decision (including any steps ordered)

1. The complainant has requested information about 999 calls where technician or emergency care assistant-only teams were the first or only responders, for particular years. West Midlands Ambulance Service (WMAS) released some information and withheld some under section 22 of the FOIA (information intended for future publication) and section 22A (research).
2. The Commissioner's decision is that, with regard to requests 3 and 4, WMAS does not hold the information on particular categories of ambulance call outs for the months June to December 2016. She finds WMAS breached section 1(1)(a) of the FOIA in this regard as it had confirmed it held information that it did not hold.
3. The Commissioner has also decided that, at the time of the request, the information within the scope of request 1 that WMAS holds did not engage either section 22(1) or section 22A.
4. WMAS was instructed to release this information to the complainant during the course of the Commissioner's investigation. If it has not already done so, WMAS must take the following step to ensure compliance with the legislation:

- Release to the complainant the information it holds that falls within the scope of request 1, for the months June to December 2016.
5. 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

6. On 2 February 2017, the complainant wrote to WMAS and requested information in the following terms:

"Under the Freedom of Information Act, please can you provide me with

[1] the number of 999 calls technician or emergency care assistants only teams were the first or only responders, rather than a team including a fully-qualified paramedic.

[2] Please provide this information for each month for each of the past two years (2015 and 2016).

[3] Please can you break this information down by category of call (e.g. Red 1, Red 2, Category C) and by division.

[4] Please can you also provide a total number of 999 calls in each category responded to in each month in each local authority."

7. WMAS responded on 2 March 2017 and released a spreadsheet of information for the months January 2015 to May for 2016.
8. The complainant requested an internal review on 13 March 2017 with regard to information for June to December 2016. WMAS provided a review on 24 March 2017 at which point it said it did not hold information for June to December 2016.
9. However, in correspondence dated 4 April 2017, WMAS indicated to the complainant that it does hold this information and that it was exempt from release under section 22 and 22A of the FOIA as it was intended for future.
10. WMAS explained to the Commissioner that the information would be published as part of an Ambulance Response Programme (ARP). This was a nationally conducted trial that WMAS was involved in along with two other ambulance Trusts. The three key elements of the

programme were 1) identification of those patients in need of the fastest response 2) the dispatch the most clinically appropriate vehicle and 3) a new evidence-based set of clinical codes.

11. In July 2017, the ARP's final report on the trial was published. However, the complainant has told the Commissioner that the specific information she had requested regarding the months June to December 2016 is not published in this report.

Scope of the case

12. The complainant contacted the Commissioner on 7 April 2017 to complain about the way her request for information had been handled.
13. As a result of the Commissioner's contact with the complainant and WMAS during her investigation, the focus of her investigation became first, whether WMAS holds all the information that has been requested for the months June to December 2016. The Commissioner has gone on to consider whether, at the time of the request, WMAS was correct to apply section 22(1) and section 22A to the relevant information it is found to hold and which it said was exempt from disclosure. If appropriate she has been prepared to consider the public interest arguments associated with these exemptions.

Reasons for decision

Section 1 – general right of access to information

14. In her submission to the Commissioner, the complainant said that in her opinion it was not clear, and WMAS had offered no evidence, that the information she has requested about the number of ambulances staffed by technicians is related in any way to the national ARP trial. This is because the information she has requested is not about response times, with the only apparent link being the names of 'call categories'.
15. The Commissioner put this point to WMAS. In correspondence dated 31 August 2017 WMAS confirmed that it had been able to release the information requested using the categories specified in the request, up until June 2016. After that time, it began to participate in the ARP trial. WMAS says that once the trial commenced, the patient groups and response criteria changed and the new categories that were being trialled were no longer aligned with the previous categories. It considered that the data for June to December 2016 would therefore not be consistent or meaningful to the requestor.

16. On the basis of this, it was not completely clear to the Commissioner whether or not WMAS does or does not hold *all* the information that the complainant has requested for the period June 2016 to December 2016.
17. In request 3, the complainant has requested a break-down of the number of technician-only crews by category of call, and has cited Red 1, Red 2 and Category C categories. (She has also requested this break down by division.) In addition, in request 4, the complainant has requested the total number of 999 calls, apparently in each of the above categories, responded to in each month in each local authority area.
18. On further questioning, WMAS explained to the Commissioner that up to June 2016, it categorised calls to its ambulance service as either Red 1 (most urgent) or Red 2 or Green 1 – 4. From June 2016, and its participation in the Ambulance Response Programme trial, WMAS categorised calls in a new way, with four categories of call: from Category 1 (most urgent) to Category 4 calls.
19. WMAS confirmed that the four new categories do not align with the former six categories – the definitions behind both sets of categories differ – and consequently its position is that it does not hold the specific information that the complainant has requested in request 3 (including with relation to divisions) and request 4 which concerns the former categories, for the period June to December 2016. It says, however, that categorisation of calls under the new system for that period using the new categories, are included in the published report.
20. With regard to requests 3 and 4 then, which concern particular categories and the period June to December 2016, having considered the matter the Commissioner finds that WMAS does not hold this information ie particular information on Red 1, Red 2 and Category C call categories for the period June to December 2016.

**Section 22 – information intended for future publication /
Section 22A - research**

21. Section 22(1) of the FOIA says that a) information is exempt information if it is held by the authority or another person with a view to its publication at some future date (whether determined or not); (b) the information was already held with a view to such publication at the time when the request for information was made; and (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).
22. Section 22A says that information obtained in the course of, or derived from, a programme of research is exempt information if (a) the programme is continuing with a view to the publication, by a public

authority or any other person, of a report of the research and (b) disclosing the information before the date of publication would, or would be likely to, prejudice: the programme; the interests of any individual participating in the programme; the interests of the authority which holds the programme; or the interests of the authority mentioned in paragraph a).

23. Section 22(1) and section 22A are subject to the public interest test.
24. Because WMAS does not hold the information the complainant has requested about particular categories discussed in paragraphs 14 to 20, it follows that WMAS was wrong to apply section 22(1) and section 22A to requests 3 and 4 as it could not have intended to publish information it did not hold, and this particular information could not therefore have derived from a programme of research.
25. The Commissioner has gone on to consider whether WMAS was correct to apply section 22 and/or section 22A to the remainder of the information that it *does* hold; that is, request 1 - the number of 999 calls in which technician or emergency care assistants only teams were the first or only responders.
26. In the course of her discussions with WMAS, WMAS acknowledged that information on the number of first responding technician or emergency care assistant-only teams for the period June to December 2016 was not, in fact, included in the published report. It said it *did* hold this information, however and on 18 September 2017, the Commissioner advised WMAS to release this information to the complainant.
27. In her guidance on section 22, the Commissioner advises that a general intention to publish some information will not suffice. It is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication. The information that the public authority intends to be published must be the specific information the applicant has requested.
28. It appears to the Commissioner that WMAS did not carefully consider the specifics of the request for the information relating to June to December 2016, including whether it held all the information. WMAS appears to have considered that all this information would be generally covered by the ARP trial and would be included in the final published report.
29. WMAS has provided the Commissioner with evidence of what it considers to be an intention to publish the disputed information at the time the request was received. This is email correspondence from NHS England which appears to have been produced in March 2017. The

correspondence refers to the fact that, throughout the programme, NHS England had been clear to the Trusts involved that information about the clinical trials should not be made public until the trial was complete and the evaluation report by Sheffield University was available.

30. The Commissioner notes that this correspondence is dated *after* the complainant's request of 2 February 2017. It is the only evidence of an existing intention to publish the information that WMAS has provided. While the Commissioner is prepared to accept that another person, ie NHS England, intended to publish information within the scope of the wider request, the Commissioner does not find the above email exchange to be compelling evidence that NHS England's intention to publish the specific information requested, relating to June to December 2016, existed at the time the request was made.
31. In view of the above; namely that the information in question - the number of 999 calls in which technician or emergency care assistants only teams were the first or only responders for the period June to December 2016 - was not finally published and that she has not seen convincing evidence that, originally, there was a settled intention to publish this specific information, the Commissioner has decided that WMAS incorrectly applied section 22(1) to this information.
32. Finally, the Commissioner has considered WMAS's application of section 22A. This says that information obtained in the course of, or derived from a programme of research is exempt from release under certain circumstances. The Commissioner first considered whether the information was obtained in the course of or derived from a programme of research and she has not been persuaded that it was. Not least this is because the disputed information was not included in the final research report. And it seems to the Commissioner that, quite separately from the research programme, WMAS routinely captures this information and was able to release it for the periods 2015 and up to June 2016.
33. To summarise, the Commissioner finds that WMAS wrongly applied section 22(1) and section 22A to the information it holds within the scope of request 1 (numbers of technician/assistant only teams for the period June to December 2016). Because she find these exemptions were not engaged to this request, it has not been necessary to consider the associated the public interest arguments.

Right of appeal

34. 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

35. 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.
36. 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

Andrew White
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