

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 February 2019

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle Upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has requested information relating to how the Care Quality Commission (the CQC) performs its role of ensuring that GP Practices are able to provide safe, effective, compassionate, high quality care to patients harmed by their experience of domestic abuse, racial abuse and discrimination. The complainant is concerned that the CQC has not complied with section 1(1), section 10(1), section 16(1) and section 17(1) of the FOIA.
2. The Commissioner's decision is that the CQC has complied with its obligations under section 1(1), section 10(1), section 16(1) and section 17(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 3 May 2017, the complainant wrote to the CQC and requested information in the following terms:

*"This is a Freedom of Information Request.
Please inform me whether or not you hold the information specified below, and if you do please send me a copy of all the recorded information you hold fitting the criteria of my two requests.*

I wish to receive copy of all information you hold of:-

1) How you make sure GP practices are able to provide 'safe, effective, compassionate, highquality care' that is responsive to, and addresses, the specific needs of patients harmed by their experience of domestic abuse.

2) How you make sure GP practices are able to provide 'safe, effective, compassionate, highquality care' that is responsive to, and addresses, the specific the needs of patients harmed by their experience of racial abuse and discrimination.

In particular I would like to receive a copy of all information you hold which documents what publications and information you would expect GP's to hold in order to assist their ability to be able to provide the kind of care as described in my two above requests.

I would expect you to hold such information as I have requested given all that I have read on your website for example page 12 of your publication titled;

'20160127_gp_practices_provider_handbook_jan16' states;

' Equality is a particularly important principle for primary care. Not only do GP practices need to address health inequalities for certain population groups – differences in health status and the social factors that influence health – but people from some groups may experience particular barriers in accessing GP services or may be at risk of experiencing prejudice or discrimination when they are using these services. Our new approach to regulating GP practices , based on looking at how services are provided to specific population groups, will enable us to look at both equality for people who use services and health inequalities.'"

5. The CQC responded on 15 May 2017 and confirmed that it did hold recorded information in relation to the request for information. It explained that the CQC uses its provider handbook and appendices to ensure practices provide safe, effective, compassionate and high quality care. The CQC provided the complainant with a link to the handbook and referred to specific parts of the handbook in response to his request. The CQC also referred to its duty to provide advice and assistance, and provided the complainant with a link to its "*human rights approach for [its] regulation of health and social care services*".
6. On 21 June 2017 the complainant requested an internal review of his FOIA request, stating that the CQC had failed to provide him with the following within 20 working days –
 - a copy of all the recorded information it held fitting the criteria of his request

- a proper/valid refusal notice for not sending him a copy of all the recorded information it held fitting the criteria of his request
7. The complainant explained to the CQC that he was of the opinion that it held further recorded information, fitting the criteria of his request, that the CQC have not provided him with a copy of. The complainant provided an example using the following extract from his request:

"In particular I would like to receive a copy of all information you hold which documents what publications and information you would expect GP's to hold in order to assist their ability to be able to provide the kind of care as described in my two above requests".
 8. The complainant also stated that the CQC's statement that it is "able to confirm that CQC does hold recorded information in relation to this matter" poorly addresses its duty to confirm or deny whether it holds the requested information and the complainant is of the view that it is an ambiguous response.
 9. The CQC provided the outcome of the internal review on 26 June 2017. It stated that it provided a response to the complainant's request for information within 8 working days. The CQC explained that because it was not claiming that any information was exempt, it rejected his claim that it had failed to provide a proper/valid refusal notice for not sending him a copy of all the recorded information.
 10. With regards to the complainant's claim that the CQC had failed to provide him with a copy of all the information requested, the CQC explained that the Health and Social Care Act 2008 and its associated regulations does not specify that providers need to have specific regard to the subject matter of his request. It explained that the CQC would be able to offer specific advice in every situation that may arise in the circumstances described in his request. It went on to explain what the CQC expects of GPs but clarified that it cannot mandate GPs to act in a particular way or hold specific publications relating to the subject matter of his request.
 11. The CQC was therefore of the view that, other than the general descriptions of what it expects from providers of GP services (which it provided to the complainant in its original response), it did not hold any other specific information, such as lists of publications and information it would expect GPs to hold in order to provide care. The CQC confirmed that all information relating to what the CQC expects from all providers was available on its website.

Scope of the case

12. The complainant contacted the Commissioner on 22 January 2018 to complain about the way his request for information had been handled. In particular, the complainant is concerned that:
- the CQC has failed to provide him with a copy of all the information he requested (which he considers it is likely to hold), or a proper/valid refusal notice for that information, within 20 working days,
 - the CQC has failed to clearly confirm or deny whether it holds the requested information, and
 - the information the CQC did provide him with was provided beyond the 20 working day time limit.
13. During the course of the Commissioner's investigation the complainant raised a further concern that the CQC has not complied with its obligation under section 16(1) of the FOIA to provide advice and assistance to the requester.
14. The Commissioner considers the scope of this case is to determine whether the CQC has complied with its obligations under section 1(1), section 10(1), section 16(1) and section 17(1) of the FOIA.

Reasons for decision

Section 1 – general right of access

15. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
16. The complainant is concerned that the CQC has failed to clearly confirm or deny whether it holds the requested information.
17. The Commissioner has reviewed the CQC's response to the complainant's FOIA request dated 15 May 2017 in which it stated:
- "In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold recorded information in relation to this matter".*
18. The Commissioner is therefore satisfied that the CQC has complied with its obligation under section 1(1)(a) of the FOIA and informed the

complainant that the CQC holds information falling within the scope of the request.

19. The complainant is also concerned that the CQC has failed to provide him with a copy of all the information he requested (which he considers it is likely to hold).
20. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.
21. In its submission to the Commissioner, the CQC has explained that it is the independent regulator of health and adult social care in England. The CQC went on to explain that its role is to make sure health and social care services provide people with safe, effective, compassionate, high-quality care, and that it encourages care services to improve. It has stated that as a key part of carrying out this role it has powers of inspection and various enforcement powers. The CQC has stated that it was established under the Health and Social Care Act 2008 and it enforces compliance with a set of regulations under that Act.
22. The CQC has confirmed that it publishes sector specific 'handbooks' which set out its inspection framework. As appendices to these handbooks, it publishes its Key Lines of Enquiry (KLOEs) which set out the areas it looks at when inspecting whether a practice is safe, effective, caring, responsive and well-led. The CQC has stated that people's human rights are enshrined in all that it does.
23. The CQC has explained that although it may not have a specific KLOE for domestic abuse or racial abuse, it does have one about people being protected. It has stated that it considers, on registration and inspection, whether all providers have systems and processes in place to protect people.
24. The CQC has confirmed that it does consider the approach to safeguarding upon inspection and, where necessary, whether the practice is identifying abuse and responding to it appropriately.
25. The CQC has explained that in its initial response to the request, and its subsequent internal review response, it attempted to explain how its approach to the specific issues of domestic abuse, and racial abuse and discrimination, were part of this wider approach to assessing how providers protect people who use their services from abuse and safeguard their welfare.

26. The CQC went on to explain that, in doing so, it provided the complainant with the information that it holds that falls within the scope of the request. The CQC attempted to explain to the complainant the context of that information and why it included, but was not limited to, the specific questions that the complainant had asked.
27. With regards to the searches it carried out to locate information falling within the scope of the request, the CQC has stated that it reviewed the GPs information for providers page on its website, which it says comprehensively sets out how it inspects GP practices. It also reviewed the guidance for its inspectors on its intranet.
28. The CQC has stated that when it was preparing its response to the request, it consulted with the Primary Medical Services Policy team. The CQC has explained that this team is responsible for developing and implementing the CQC's approach to the regulation and inspection of GP services. It has stated that it also consulted with the CQC's National Safeguarding Advisor. The CQC has stated that it is satisfied that these colleagues are best placed to be able to identify and explain the CQC's approach to the regulation of GP services.
29. As explained above, the CQC has a statutory function to regulate GP services and it has stated that this includes enforcement of regulation 13 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The CQC has stated that, in enforcing this regulation, it ensures that people who use services are protected from abuse, and that services are provided in a way that does not discriminate on grounds of any protected characteristic (as defined under section 4 of the Equality Act 2010).
30. However, the CQC has confirmed that there is no statutory requirement for it to have an approach that is specific to the needs of patients harmed by experiences of domestic abuse, or by racial abuse or discrimination. It has also confirmed that it is not required, or empowered, to specify the information and publications that GPs must hold in this regard.
31. The CQC has maintained its position that the information it provided to the complainant on 15 May 2017 is the information that it holds within the scope of the request, but it does not hold information that is specific and limited to the matters in which the complainant is interested.
32. The Commissioner wrote to the complainant on the 12 October 2018 outlining the CQC's response and provided a preliminary view that, on the balance of probabilities, the CQC does not hold any further information within the scope of the complainant's FOIA request. The complainant responded to the Commissioner, providing samples of

evidence that he believes clearly shows that the CQC is likely to hold further information that falls within the scope of his request, and has stated the following:

"My complaint is based on such things as-

1). Discussing the matter with a (no-nonsense) serving healthcare professional, who has experienced CQC inspections, and who agreed with my complaint argument.

*2). CQC's inspection process, involving recording their assessments/findings. ****

*3). My Request topics involving wide range of information on such things as, training of clinical and non clinical members of the Practice team, safeguarding, vulnerable adults, reporting to the Police, social services, equality responsibilities etc. ****

**** = CQC holding Information likely to fit scope of my Request.*

4). Following extracts from CQC's ?

20160127_gp_practices_provider_handbook_jan16-1.pdf ?

Pg. 7. ?Figure 1: CQC's overall operating model ?

Pg. 10. ?Figure 2: Examples of the four main sources of evidence?

*?Our inspection teams will also use **guidance** for each of the population groups, which has been developed with internal and external specialists. It highlights **key data items, specific prompts** for the service, the people who should be interviewed and which areas should be inspected.
?*

*Pg. 11. ?The inspection team use their professional judgement, taking into account **best practice and recognised guidelines**, with consistency assured through the quality control process. ?*

*Pg. 21. ?Our overall aims in these circumstances are to: Use appropriate methods and an inspection team with the **relevant expertise to assess the services provided.**?*

Pg. 22. ?6. Planning the inspection

*?The data packs are arranged around the five key questions and incorporate **information** from our Intelligent Monitoring, NHS England, Public Health England, the General Medical Council, Office for National Statistics and the Public Health Observatory. They will be used to identify questions, but not to make final judgements.?*

5). Following extracts from CQC's,

?20150327_GP_practices_provider_handbook_appendices_march_15_update-1.pdf?

*Pg. 9. ? How are relevant and **current evidence-based guidance, standards, best practice and legislation identified** and used to develop how care and treatment are delivered (This includes from **NICE and other expert and professional bodies.**)*

? Do people have their needs assessed and their care planned and delivered in line with

evidence-based guidance, standards and best practice, including during:

- Assessment*
- Diagnosis*
- Referral to other services*
- Management of long-term or chronic conditions, including for people in the last 12 months of their life.?*

The above sample evidence makes it clear CQC will be likely to hold further information.

Also, I have seen information fitting both the above Pg. 9 description and the scope of my Request and I consider it highly probable CQC will also hold such information otherwise I find it difficult to understand how the CQC could be, for example, fulfilling its responsibility to (as I Requested information on), ? make sure GP practices are able to provide ?safe, effective, compassionate, high-quality care? that is responsive to, and addresses, the specific needs of patients harmed by their experience of domestic abuse. ?”

33. The Commissioner therefore followed up the complainant’s points with the CQC.
34. With regards to the complainant’s first point, the CQC referred to its initial submission to the Commissioner in which it explained that its response to the request was based upon a review of its internal and published documentation on GP inspection, information produced to inform providers on what to expect from the CQC and also to guide its own inspectors in their duties, and also from the expertise of colleagues involved in the development of the CQC’s methodology for the regulation and inspection of GPs and colleagues who specialise in safeguarding of vulnerable persons. The CQC has explained that it is possible that questions relating to the provision of care to patients harmed by their experience of domestic abuse, or by their experience of racial abuse and discrimination, have arisen in relation to individual inspections in the past, but that does not mean the CQC has specific guidance or methodology on inspection or regulation in relation to these particular groups of patients.

35. With regards to the complainant's second point, the CQC has explained that it is possible that these issues have arisen in relation to individual regulatory processes. It went on to explain that it considers that reviewing all of the CQC's inspection reports, evidence and supporting documentation to find evidence of where this has occurred would fall outside of the scope of the request made by the complainant.
36. With regards to the complainant's third point, the CQC has stated that it holds a large range of information directly or indirectly relating to its regulatory methodology for GP inspections. It has confirmed that none of this information directly relates to the specific patient group requested.
37. With regards to the complainant's fourth point regarding the CQC's overall operating model on page seven of the GP Practices Provider Handbook January 2016 (the Handbook), the CQC is not clear how this diagram relates to the complainant's request or suggests that the CQC does, or should, hold the further information that the complainant is seeking.
38. With regards to the complainant's fourth point regarding page 10 of the Handbook, the CQC has clarified that the 'population groups' referred to in this point are listed on page eight of the Handbook. The CQC has provided the Commissioner with the guidance for the population groups listed on page eight that were in place at the time of the request. The CQC stated that the guidance makes no specific mention of patients harmed by their experience of domestic abuse, or by their experience of racial abuse and discrimination.
39. With regards to the complainant's fourth point regarding page 11 of the Handbook, the CQC has explained that when carrying out an inspection, its inspectors may assess providers' practice against best practice and recognised guidelines. The CQC gave the example of an inspector that is considering the quality and safety of care provided to people with diabetes; the inspector may access and check against guidance on diabetes care produced by NICE, NHS England or other expert bodies. The CQC has stated that this does not mean that it creates such guidance or has a library of guidance or an authoritative model of good practice.
40. With regards to the complainant's fourth point regarding page 21 of the Handbook, the CQC has explained that its inspection teams are led by professional inspectors and may include subject matter experts, specialist advisors or experts by experience (people with experience of using similar services). The CQC has gone on to explain that when planning an inspection, it will identify the expertise required and will work within its published methodology. The CQC has stated that this

does not mean that it has methodology or guidance directly relating to the specific patient groups identified in the complainant's request.

41. With regards to the complainant's fourth point regarding page 22 of the Handbook, the CQC has confirmed that the data packs referred to in the Handbook have been superseded. The CQC has provided the Commissioner with a document showing the data items that were included in these packs and advised that none of the data packs specifically related to the patient groups identified by the complainant in his request.
42. With regards to the complainant's fifth point regarding page 9 of the Appendices to the provider handbook March 2015, the CQC has clarified that the fact that current evidence-based guidance, standards, best practice and legislation exist on a vast range of aspects of GP practice and care does not mean that CQC holds such information or that it forms part of its methodology. It confirmed that the prompts set out in the KLOE documents are the questions that it would ask of the provider.
43. With regards to the complainant's final paragraph, where he considers it highly probable that the CQC holds information fitting the scope of his request, the CQC has stated that it may be that guidance, standards or best practice on GP care for patients harmed by domestic abuse does exist. If an inspector had reason to explore this question with a GP, they may carry out some research and may obtain a copy of these documents and discuss it with the provider on inspection.
44. The CQC stated that if it did, by these means, hold such a document, it does not consider that this information would be within the scope of the complainant's request as it would not be a part of the CQC's methodology.
45. The CQC went on to explain that the complainant asked the CQC how it ensures that GPs provide safe, effective, compassionate, high quality care to patients harmed by their experience of domestic abuse, or by their experience of racial abuse and discrimination. The CQC explained that its response to the complainant directed him to the CQC's published information which it says clearly sets out the CQC's inspection methodology, and explained how the patient groups the complainant was interested in may be considered under that methodology. However, the CQC has confirmed that there was nothing within the CQC's GP methodology which explicitly referred to the patient groups the complainant asked about at the time of the request.
46. Having considered the points raised by the complainant and having reviewed the Handbook, the Commissioner understands why the

complainant may be of the view that the CQC holds further information falling within the scope of the request.

47. However, the Handbook referred to in the complainant's points describes the CQC's approach to regulating, inspecting and rating NHS GP practices and GP out-of hours service. The focus of the CQC's inspections is on the quality and safety of the service and it will always ask five key questions of the services, as well as look at how the services are provided to people in six specific population groups, which are:
 - Older people
 - People with long-term conditions
 - Families, children and young people
 - Working age people (including those recently retired and students)
 - People whose circumstances make them vulnerable
 - People experiencing poor mental health (including people with dementia).
48. In this case, the complainant has requested information relating to patients harmed by their experience of domestic abuse, racial abuse and discrimination. These specific population groups are not one of the services that the CQC focuses on when inspecting a GP practice.
49. The Commissioner is therefore of the view that the points raised by the complainant in his further submission to her do not demonstrate that the CQC holds further information that falls within the scope of the complainant's request.
50. The Commissioner has considered the searches performed by the CQC, the information it has disclosed, the submissions provided by the CQC in response to this complaint as to why there is no further information held, and the complainant's concerns.
51. Having considered the scope of the request, the Commissioner considers that the CQC has carried out adequate searches to identify the information it held falling within the scope of the complainant's request. The CQC has also spoken to the relevant colleagues who are best placed to identify and explain the CQC's approach to the regulation of GP services.

52. The Commissioner is satisfied that, on the balance of probabilities, the information falling within the scope of the complainant's original request has been provided to the complainant.

Section 10 – time for compliance

53. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt.
54. The request in question was made on 3 May 2017, therefore the CQC should have provided its response to the request in compliance with section 1(1) of the FOIA by no later than 1 June 2017.
55. The CQC provided a response to the request on 15 May 2017, in which it confirmed that it did hold the requested information and provided the complainant with the information held. The CQC's response was provided 8 working days following receipt of the request.
56. The Commissioner is therefore satisfied that the CQC has complied with its obligations under section 10(1) of the FOIA.

Section 16 – advice and assistance

57. Section 16(1) of the FOIA says that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
58. The duty to provide advice and assistance arises in certain situations. These are broadly:
- a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds;
 - b) if a request for information is not clear to the public authority;
 - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit; and
 - d) transferring the request to another public authority.
59. The complainant is concerned that the CQC has not complied with its obligation to provide advice and assistance to the requester. The complainant has referred to the CQC's internal review response dated 5 July 2017, which stated:

"Moving on to the second limb of your request for a review, you are claiming that CQC have failed to provide you with a copy of all the information requested. In truth your request itself was not particularly helpful in allowing us to answer your query. You specifically focused on the specific needs of patients harmed by their experience of domestic abuse and patients harmed by their experience of racial abuse and discrimination."

60. In particular, the complainant has referred to the following sentence in the CQC's response:

"In truth your request itself was not particularly helpful in allowing us to answer your query."

61. The complainant is concerned that the CQC has failed to comply with its obligations under section 16(1) by failing to clarify with the requester the specific information sought.
62. The Commissioner has reviewed the CQC's internal review response and following on from the sentence that the complainant is concerned about above, the CQC explained the following:

"Nowhere in the Health and Social Care Act 2008 and its associated regulations, do providers need to have specific regard to such matters, The legislation is far more general than that. Indeed, even the General Medical Council (who regulate the professional practice of GP's) in its good medical practice guide do not refer to the specific issues of domestic abuse and racial abuse/discrimination, but rather offer general advice on abuse and discrimination.

CQC is no different in this regard and we would be able to offer specific advice in every single situation that may arise in the circumstances you describe. What we would expect from GP's is to put the patient and their needs at the heart of everything they do, and seek appropriate advice when needed from a variety of bodies which could include the GMC, NHS England, the Clinical Commissioning Group or on occasion CQC. However, we cannot mandate GP's to act in a particular way, or hold specific publications relating to the specific issues of domestic abuse and racial abuse/discrimination. If we did we become less a regulator and more a performance manager of Health and Social Care provision and that is not our role.

I have therefore reached the view that other than the general descriptions of what we expect from providers of GP services, which was provided in our original response, there is no other specific information such as lists of publications and information you would expect GP's to

hold in order to provide care. All information relating to what CQC expects from all providers is available on our website."

63. When considering the full response to the complainant's internal review complaint about the CQC's failure to provide him with a copy of all the information requested, the Commissioner considers that the CQC did understand the specific information being sought by the complainant and provided the complainant with advice.
64. In its submission to the Commissioner, the CQC has stated that it understood the complainant's request and it attempted to explain how the needs of the patients he asked about may be considered within its inspection processes, but it also pointed out that its methodology did not explicitly identify and give guidance on these particular patients.
65. Furthermore, the Commissioner notes that in the CQC's initial response to the complainant's FOIA request, it specifically referred to its obligation under section 16(1) of the FOIA to provide reasonable advice and assistance. It explained to the complainant that "*there is a Human Rights link to the way we focus our questions to providers when satisfying ourselves of the key questions*" and provided the complainant with a link to its "*human rights approach for [its] regulation of health and social care services*".
66. The Commissioner is therefore satisfied that the CQC complied with its obligations under section 16(1) of the FOIA and provided the complainant with reasonable advice and assistance.

Section 17 – refusal of request

67. Section 17(1) of the FOIA states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon and explain why it applies (if not apparent), no later than 20 working days after the date on which the request was received.
68. The complainant is concerned that the CQC has failed to provide him with a proper/valid refusal notice for the information it does hold fitting the criteria of his FOIA request, within 20 working days.
69. In the circumstances of this case, the CQC confirmed that it does hold information falling within the scope of the request and provided the complainant with the information it held. A refusal notice is only required if a public authority holds the requested information and considers some or all of it is exempt from disclosure under Part II of the FOIA. The Commissioner therefore does not consider the CQC to have breached section 17 of the FOIA in this case.

Right of appeal

70. 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

71. 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.
72. 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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