

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2021

Public Authority: Barking, Havering and Redbridge University Hospitals NHS Trust

Address: Queen's Hospital
Rom Valley Way
Romford
Essex RM7 0AG

Decision (including any steps ordered)

1. The complainant has requested information about death rates. The position of Barking, Havering and Redbridge University Hospitals NHS Trust ('the Trust') is that it does not hold the requested information.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust does not hold the information the complainant has requested and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require the Trust to take any remedial steps.

Request and response

4. On 19 September 2019 the complainant had written to the Trust and requested information in the following terms, as part of a wider request:

"G) Please can you supply me with the updated table containing 6 conditions which is attached called "death rates"

I seek the information in the same format but for 12 months. So this means 12 tables commencing September 2018 finishing August 2019. I recognise this may take unusually high resources, but it must be in the public interest to find out if higher death rates are associated with Queens due to patients waiting longer for type 1 care at Queens than King George.

If such a correlation exists, as <https://www.nhsimas.nhs.uk/ist/how-to-stabiliseemergency-care-in-england/> suggests there will be, it will support the argument that BHRUT management should act to equalise type 1 performance at both sites."

5. The Trust had responded on 17 October 2019. With regard to part G of the request, the Trust asked the complainant to identify the source of the table he had sent to it so that the Trust could make further enquiries.
6. Following the Commissioner's intervention, on 17 August 2020 the complainant communicated to the Trust the source of the table he had referred to in his request. This is discussed below.
7. On 2 September 2020 the Trust provided a response to this part of the request. It discussed the situation regarding information published on NHS Digital's website and directed the complainant to that website. The Trust indicated that it does not hold the specific information the complainant has requested – a breakdown of death rates by month.
8. The Trust provided a review on 13 October 2020. It maintained its position that it does not hold the specific information the complainant has requested. The Trust advised the complainant that the FOIA does not oblige it to create a new dataset in order to respond to a request.

Scope of the case

9. The complainant first contacted the Commissioner on 16 December 2019 to complain about the way his request for information had been handled.
10. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Trust holds the information the complainant has requested and has complied with section 1(1) of the FOIA.

Reasons for decision

Section 1 – right of access to information held by public authorities

11. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
12. In its submission to the Commissioner the Trust has explained that the table shared by the complainant was identified as Summary Hospital-Level Mortality Indicator (SHMI) data from July 2015 to June 2016. It had been made available as part of a response to an FOI request in December 2016.
13. The Trust has told the Commissioner that the complainant had referred to SHMI and Hospital Standardised Mortality Ratio (HSMR) data in the course of his various communications with the Trust. It had explained to him the difference between two data sets in its response to an earlier request from the complainant in February 2019.
14. The Trust goes on to say that in its communications with the complainant over the years, it has referred to two separate tables shared in its published Board papers (SHMI – December 2016, HSMR – October 2018). Both mortality data sets are taken from the Hospital Evaluation Data (HED) website, to which the Trust is subscribed.
15. Following discussions as a result of this investigation, the Trust has told the Commissioner that a member of Trust staff has confirmed that the data provided to the complainant in 2016 was taken from the HED – the website portal above, to which the Trust and other NHS Trusts are subscribed. The Trust confirmed that the data was not at any point in time taken from a Trust-based system or database.
16. The Trust has broadly outlined for the Commissioner how the NHS Digital reporting portals work, how SHMI is calculated and what the Trust shares with the portals in order for these calculations to be made.
17. The Trust says it securely shares a large amount of confidential patient activity, including “personal information”, diagnosis, dates of admittance and discharge, procedures and outcomes ie death, amongst other factors. Details are securely shared with two NHS Digital portals: the Hospital Episode Statistics (HES) and Secondary Uses Service (SUS).

18. Data is not submitted once but undergoes a number of submissions to allow for changes in diagnosis, dates and outcomes amongst other factors. In essence, any results are normally deferred to take account of updates and for data to be validated. This then provides a true reflection of patient statistics.
19. In a third step, the third NHS Digital portal – HED – uses this information, correlates it with data taken from the Office for National Statistics (ONS) and uses its own statistical methods to calculate the SHMI data. The Trust has confirmed that it does not calculate the SHMI data itself.
20. The Trust has provided the following definition of SHMI data:

“...The SHMI is the ratio between the actual number of patients who die following hospitalisation at the trust and the number that would be expected to die on the basis of average England figures, given the characteristics of the patients treated there.”
21. It has also noted that NHS Digital has published the following statement alongside the SHMI data that is on its website:

“The SHMI is not a measure of quality of care...The SHMI cannot be used to directly compare mortality outcomes between Trusts and it is inappropriate to rank trusts according to their SHMI...”
22. For reporting purposes, or as required, the Trust says it is able to log in to the HED portal as a subscribed user to identify information for planning and reporting purposes. The HED website is not simply used by NHS Trusts to extract mortality data when needed but allows reporting on a whole range of areas. This allows services to be analysed and allows future planning. The Trust has confirmed that it does not commission the production of SHMI data.
23. The Trust has noted it appears that the complainant may have a theory or presumption about the standards of healthcare that the Trust provides and is seeking data to support that theory. In the Trust's view, it is not required to create a data set to respond to the complainant's request. The only element of the information in the table the complainant shared that it would hold, the Trust says, would be number of deaths. However, the Trust notes that the request is for death rates ie SHMI data, which the Trust confirms it neither produces nor holds.
24. The Commissioner understands that 'death rate' is a measure of the number of deaths (in general or due to a specific cause) in a particular population, scaled to the size of that population, per unit of time ie it is distinct from number of deaths. The Commissioner has reviewed part G

of the complainant's wider request, which is the focus of this investigation. He had named the table about which his request in part G is focussed, "death rates" and that table concerns SHMI data (ie information about death rates). The complainant also says in his request that he considers there is a public interest in "death rates" and has requested SHMI data for 12 months. As such the Commissioner is satisfied that the request is a request for information about death rate / SHMI information and not information about number of deaths.

25. The Commissioner has considered the Trust's explanation of how it manages certain information and its interaction with NHS Digital. The Trust says that it submits particular information to two NHS Digital portals, re-submitting this information to ensure it is up to date. A third portal – HED – then takes the information, correlates it with ONS data, and calculates SHMI data. Along with other Trusts, the Trust subscribes to the HED portal and can log in to it to gather the SHMI data and other information.
26. The Trust has confirmed that it does not calculate SHMI data itself, that it does not hold this data and that it does not commission the HED portal to produce the SHMI data. In the absence of any evidence to the contrary, the Commissioner accepts that this is the case ie that the Trust does not hold the SHMI data the complainant has requested itself.
27. The Commissioner is also satisfied that NHS Digital - through the HED portal - does not hold the SHMI data 'on behalf of' the Trust. If the HED portal *did* hold the SHMI data on behalf of the Trust, then the Trust could be said to hold it. As it is, the HED portal takes information that the Trust submits to the HES and SUS portals, applies its own statistical methods to this information and correlates it with ONS data. This generates SHMI data. As above, while the Trust can access the SHMI data and has an interest in it, its access is controlled by NHS Digital (through the subscription) and the Trust does not help create, record, file or remove the information at its own discretion. The Commissioner is therefore satisfied that the HED portal holds the SHMI data on its own behalf and not on behalf of the Trust, or any other Trust.
28. The Commissioner has considered all the circumstances and is satisfied that, on the balance of the probabilities, the Trust does not hold the information requested in part G of the complainant's request and has complied with section 1(1)(a) of the FOIA.

29. The Trust has explained that it is possible to access NHS Digital's website¹ to see information within scope of the complainant's request. It says that the only breakdown not possible on this interactive tool is the ability to break this information down by month, but the site does provide SHMI data by site and time period and split by diagnosis.

¹ <https://digital.nhs.uk/data-and-information/publications/statistical/shmi>

Right of appeal

30. 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

31. 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.
32. 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