

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2021

Public Authority: Care Quality Commission (CQC)

Address: information.access@cqc.org.uk

Decision (including any steps ordered)

1. The complainant has requested a full list of care homes & nursing homes in Herefordshire and Worcestershire County who reported suspected or confirmed cases of coronavirus (COVID-19) to the CQC between 1 January 2020 and 10 June 2020, the exact date the CQC became aware of coronavirus and its appearance in the UK and the date of the first reported incident of coronavirus reported to the CQC by the Herefordshire and Worcestershire county. The CQC refused to comply with the request under section 12 FOIA as it would exceed the cost limit to do so and in the alternative, in relation to parts 1 and 2 of the request, it applied the exemptions contained at sections 31(1)(g), 36(2), 38(1) and 43(2) FOIA.
2. The Commissioner considers that the CQC correctly refused to comply with the request under section 12 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11th June 2020, the complainant made a request for the following information under the FOIA:

"Please provide the following:

1. A full list of care homes & nursing homes in Herefordshire County who reported suspected or confirmed cases of coronavirus (COVID-19) to the CQC between 1st January 2020 to 10th June 2020 Please present separate lists, i.e. Names of homes with suspected infection Names of homes with confirmed infection

2. A full list of care homes & nursing homes in Worcestershire county who reported suspected or confirmed cases of coronavirus (COVID-19) to the CQC between 1st January 2020 to 10th June 2020 Please present separate lists, i.e. Names of homes with suspected infection Names of homes with confirmed infection
3. The exact date the CQC became aware of coronavirus and its appearance in The UK
4. The date of the first reported incident of coronavirus reported to the CQC by the respective county i.e.
 - a. Herefordshire County
 - b. Worcestershire County"
5. On 8 July 2020 the CQC responded. It confirmed that it held information falling within the scope of the request but refused parts 1 and 2 under section 41 of FOIA (information provided in confidence) and parts 3 and 4 under section 12 of FOIA (cost of compliance exceeds appropriate limit).
6. The complainant requested an internal review. In its internal review dated 1 September 2020 the CQC applied section 12 FOIA to the whole of the request and in the alternative, in relation to parts 1 and 2 of the request, it applied the exemptions contained at sections 31(1)(g), 36(2), 38(1) and 43(2) FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the CQC was correct to refuse to comply with the request under section 12 FOIA and, if not, whether it correctly applied the exemptions to parts 1 and 2 of the request in the alternative.

Reasons for decision

Section 12

9. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
- either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
10. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
- (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
- The appropriate limit for the CQC is £450 or the equivalent of 18 hours work.
11. The CQC explained that in part 3 of the request, the complainant effectively asks for two pieces of information (a) the exact date upon which CQC became aware of the coronavirus and (b) the date it became aware of its appearance in the UK.
12. It went on that the first reports relating to the start of the novel coronavirus pandemic came in December 2019 and January 2020. To identify exactly when CQC became aware of the emergence of the virus (which started as a cluster of pneumonia cases in China, before being identified as a novel coronavirus) would require a search for the first record relating to COVID-19 (which would pre-date the use of this term) held by CQC. This record may be contained in meeting minutes, or correspondence with an external body (such as Public Health England, NHS England & Improvement, the Department of Health and Social

Care, or a registered provider) or in internal correspondence between CQC colleagues discussing information being reported in the media, or in some other document.

13. CQC said that such a search would extend to many thousands of records held in various systems and locations across CQC and could not be automated. It explained that since 23 March 2020, care homes have been asked to notify NHS England & Improvement (NHSE) of COVID 19 infections amongst their residents. This information is shared with a number of organisations, including CQC, in a dashboard of information called the Capacity Tracker. However, the first confirmed case in the UK was identified at the end of January 2020. Prior to this there are reported to have been a number of unconfirmed suspected cases which preceded the introduction of widespread testing.
14. Therefore, it said that the first record of CQC being notified of a suspected or confirmed case of COVID 19 in the UK will precede the Capacity Tracker data. CQC were aware of that first confirmed case but there are a number of ways in which CQC may have been aware of a previous suspected COVID 19 case in the UK. The first of these is through the range of statutory notifications that providers are required to make to CQC to inform it of certain matters and events in accordance with the Care Quality Commission (Registration) Regulations 2009. None of these specifically require a provider to notify CQC of a confirmed or suspected COVID 19 infection, but several of the events requiring notification may potentially arise out of such an infection.
15. Regulation 16 requires providers to notify CQC of the death of a person using the service, where that death occurred: (a) whilst services were being provided in the carrying on of a regulated activity; or (b) as a consequence of the carrying on of a regulated activity. Since 10 April 2020, providers have been required to state on the notification form whether the death is suspected or confirmed to have been caused by COVID 19. Providers may have included this information in free-text fields for regulation 16 notifications prior to that date but there was a level of inconsistency in whether and how this information was recorded prior to that date, and these pre-April 2020 notifications were not systematically tracked in a way that allows easy identification without reviewing the notification form itself.
16. Regulation 17 requires providers to notify CQC of the death of a person who is detained, or liable to be detained, under the Mental Health Act 1983. The notification form asks for the cause of death but in the early days of the pandemic there is likely to have been some inconsistency in

whether and how a suspected COVID 19 death would be recorded on the form.

17. Under regulation 18, providers must notify CQC of an event which prevents, or appears to the service provider to be likely to threaten to prevent, the service provider's ability to continue to carry on the regulated activity safely, or in accordance with the registration requirements. In some cases, providers have submitted regulation 18 notifications in relation to COVID 19 infections and outbreaks amongst service users and staff, however this would only be required where providers were concerned that infections would have a very significant impact upon their ability to carry on their service.
18. Summary information from notification forms is entered onto CQC's main CRM system and it is able to perform keyword searches across that information. However, not all of the information from free text sections of notification forms are entered into CRM. For example, CQC carried out a keyword search and found one notification in which the searchable summary read "Due to the outbreak of Corona Virus the home is closed to protect our vulnerable adults". However, a section of the form asking for "any further relevant information about the event", which was not entered into CRM and therefore only available by accessing and reading the form itself, read "There has been no confirmed cases in the home but this is precautionary measure taken to reduce the risk."
19. The CQC went on that it is also likely that in some cases – especially early in the pandemic - the information from the form which would be picked up by a keyword search will be in parts of the form that have not been entered into CRM fields. This therefore demonstrates that a keyword search of CRM data will not be adequate to comprehensively assure that it identified the first statutory notification received by CQC relating to COVID 19.
20. Aside from statutory notifications, CQC said that it is likely to hold information relating to suspected cases of COVID 19 that it received from external sources in emails, records of telephone calls or notes of meetings. This may be information from other public authorities, registered providers, provider staff, people who use services or members of the public. As with statutory notifications, where summary information has been entered into fields on CRM it is possible to conduct keyword searches but if the relevant keyword is held within a document attached to CRM – but not entered into a CRM field – these would not be located by such a search. Nor would such records be searchable where they have not been saved onto CRM.

21. Other records which are not saved onto CRM may include notes of calls or meetings with other agencies, such as the Department of Health and Social Care (DHSC), Public Health England (PHE), NHS England & Improvement (NHSE/I) or others. The first record of CQC being made aware of a possible COVID 19 case in the UK may also be held in documents such as contemporaneous notes from an inspection of a service, or an email between CQC colleagues discussing media reports. These would not be located by an automated keyword search or via any centralised search of records, but would require a large number of colleagues throughout CQC to search electronic and paper records that they hold.
22. CQC's awareness of the early stages and development of the pandemic was in-line with the public awareness and was largely driven by the publication of information by WHO and PHE but establishing, as requested, the exact date of CQC's first awareness would require a massive search. The CQC suggested a search of Executive Team records to establish the first date upon which CQC's senior leadership discussed COVID 19, but it confirmed that the requester did not take up that suggestion.
23. In terms of the first reported cases in Herefordshire and Worcestershire as explained above, providers are not required to notify CQC of cases of COVID 19 infections, however providers do often communicate this information to CQC. There are currently 745 locations registered by CQC in the local authority areas of Herefordshire and Worcestershire. These include 270 care homes (residential homes and nursing homes), 13 NHS acute hospital locations, 15 independent acute hospital locations, 83 GP practice locations, 5 hospices, 184 community-based adult social care services, as well as ambulance services, mental health services, dental practices and other types of service. Any of these might have been the first to report a confirmed or suspected case to CQC. Again as noted above, the keyword searches that the CQC could carry out of records of statutory notifications and other correspondence held on CRM for these services would not be comprehensive and it could not be assured that the earliest result identified by that search was really the first report of a COVID 19 infection to CQC. To answer these questions with assurance, CQC would be required to manually review records from mid-January 2020 onwards, including statutory notifications, email, telephone records, inspection notes, meeting notes etc.
24. The earliest case in either county found using a keyword search of its CRM records was information received by CQC on 16 March 2020 about

a member of care home staff in Worcestershire self-isolating due to related symptoms. Therefore CQC may have been required to review up to two months of correspondence and records to identify whether it received notice of any earlier case in these counties.

25. In terms of care homes notifying CQC of COVID 19 infections, as noted above, the systematic collection of data on COVID-19 infections in care homes commenced on 23 March 2020 when NHSE began regularly asking for this data from providers and including it in the Capacity Tracker dashboard, to which CQC has access. To answer parts 1 and 2 of the request, CQC would be required to carry out extensive searches of notifications and other communications prior to that date to identify any providers within Herefordshire and Worcestershire that had informed CQC of confirmed or suspected COVID 19 cases between 1 January 2020 and 22 March 2020.
26. Based upon the above, CQC considers that compliance with each part of the complainant's request would exceed the appropriate cost limit under FOIA. It appears to CQC that the complainant made the request to CQC predicated upon the belief that registered providers of health and social care services were required to notify CQC of suspected or confirmed COVID 19 cases and/or that CQC's role was to track the emergence of cases within these services. If that had been the case, it would be likely that locating and extracting the data required to respond to the request would have been relatively straightforward.
27. As this was not the case, and as much of the time period of the request relates to the period at the very start of the pandemic, before the systematic monitoring procedures were established, the effort that would be required for CQC to locate and extract the relevant information would be massive. The scale of that task has made it difficult for CQC to provide any sort of meaningful calculation of the likely cost of compliance. Whilst CQC said it was difficult to give a precise calculation of the time that would be required in order to comply with part 3 of the complainant's request, it provided some indication of the scale of the task. In total, CQC currently registers over 50,000 locations – places in England, such as hospitals, GP practices and care homes, where it regulates care. The first information received by CQC indicating a suspected or confirmed case in the UK may be held in records on its CRM system in relation to any of those services, or held in the email accounts of any of its Inspectors, Inspection Managers, or Specialist Advisors.

28. In January 2020, its National Customer Service Centre (NCSC) received over 5000 telephone calls to its general line from providers and the public. In the same period, NCSC received over 7000 emails. These are in addition to direct calls and email correspondence received by its Inspectors and other staff. With some communications, especially early in the pandemic, it might require some level of judgement to identify whether correspondence falls within the scope of the request (e.g. if it refers to symptoms being displayed, without explicitly referring to the virus) therefore it concluded that a review of records would be likely to be extensive and painstaking. As such, CQC's estimate is that a comprehensive search that would be required in order to fully comply with the complainant's request, with a reasonable degree of confidence that this would be likely to require dozens, if not hundreds, of hours of work.
29. Given the scale of the task of identifying the exact date on which the CQC became aware of Coronavirus in the UK or when particular Counties first reported a case of the virus, it would exceed the cost limit under section 12 FOIA to comply with this request in its entirety. This is due to the fact that at the start of the pandemic monitoring procedures had not been established, notification of the virus could have been communicated to CQC via a significant number of channels and key words may not have been used during any early notifications.

Section 16

30. Under section 16 FOIA the CQC is obliged to provide the complainant with advice and assistance to help enable the complainant to refine the request to fall within the cost limit or explain why this would not be possible.
31. Given the scale of this task, the advice and assistance that CQC has been able to offer has been limited. It did advise the complainant that it could conduct a search of Executive Team meeting records to identify the timeline in which CQC's senior leaders were being made aware of events. It also directed the complainant to data published by CQC and the Office of National Statistics (ONS) which tracks outbreaks and impacts of the virus at national and regional levels.
32. In this case, as CQC has provided the complainant with advice and assistance in relation to the request in so far as it was able to, it has therefore complied with its obligations under section 16 FOIA.

Right of appeal

33. 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

34. 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.
35. 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.....

Gemma Garvey
Senior Case Officer

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