

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2021

Public Authority: Devon Partnership NHS Trust
Address: Wonford House
Dryden Road
Exeter
EX2 5AF

Decision (including any steps ordered)

1. The complainant has submitted a question about the application of the Hare Psychopathy Checklist-Revised. Devon Partnership NHS Trust ('the Trust') provided an answer to the question and the complainant is not satisfied with that response.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust holds no recorded information within scope of the complainant's request and has complied with section 1(1) of the FOIA.
3. The Commissioner does not require the Trust to take any remedial steps.

Request and response

4. On 24 January 2020 the complainant had written to the Trust and requested information in the following terms:

"Can you please confirm that the application of the Hare PCL:SV within the Devon Partnership NHS Trust services is applied in accordance with empirically established validity and reliability norms consistent with the United Kingdom and generalizability?"

5. On 2 March 2020 the Trust had responded to the request. The Trust advised the complainant that it did not consider it was a valid request for recorded information under section 8 of the FOIA and it asked the complainant to confirm their identity. The complainant did so on 2 March 2020 and on 3 March 2020 the Trust responded and confirmed it considered the request was vexatious under section 14(1) of the FOIA, as it considered the complainant was using an alias.
6. The Trust provided an internal review on 16 June 2020. At this point it accepted the complainant's identity was genuine but maintained its reliance on section 14(1) to refuse to comply with the request because, it said, it had refused to answer queries about the Hare Psychopathy Checklist – Revised ('the Hare PCL:SV').
7. The complaint requested another review on 19 June 2020.
8. Following the Commissioner's decision in IC-49190-R6T8 in November 2020, which concerned a separate request the complainant had submitted to the Trust, it became apparent that the complainant had not been satisfied with the Trust's handling of the current request.
9. On 18 December 2020 the Trust provided a response to the request. It addressed the complainant's question, answering in the affirmative.

Scope of the case

10. The complainant contacted the Commissioner on 22 December 2020 to complain about the way their request for information had been handled.
11. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Trust holds recorded information within scope of the complainant's request.

Reasons for decision

12. 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.
13. The complainant has framed their question as a request for confirmation, rather than as a request for recorded information. The Trust answered the question.

14. In its initial submission to the Commissioner, the Trust said that it considers it had answered the question asked and was puzzled as to what further information it could provide to the complainant.
15. The Commissioner asked the Trust to confirm that it considered the request to be a valid request under section 8 of the FOIA and the Trust indicated that it considered that it was (section 8 is discussed further under 'Other matters' below). To the extent that the question can be considered to be a valid request under the FOIA the Commissioner must consider whether the Trust holds *recorded information* that falls within scope of the question. That is, any recorded information that supports the Trust's confirmation that it applies the Hare PCL:SV in accordance with "empirically established validity and reliability norms consistent with the United Kingdom and generalizability".
16. The Commissioner asked the Trust to clarify its position on any relevant recorded information it may hold. It confirmed to her that it had approached Forensic Services, which is the service associated with the Hare PCL:SV. A senior consultant in Forensic Services had responded and confirmed how the Trust applies the Hare PCL:SV.
17. The Trust told the Commissioner that it did not seek to identify any additional information it may hold to support the response, as it considered that the response it provided addressed the question put by the complainant. However, the Trust went on to say that it would consider conducting additional searches to identify if it holds any information that supported its response. The Commissioner suggested that it did so.
18. In correspondence to the Commissioner on 6 August 2021, the Trust confirmed that it had made further enquiries to determine if it holds any information "that supports the response given" ie that is within scope of the request as phrased.
19. The Trust told the Commissioner that its initial approach was to go back to the senior clinician who had informed its original response to the request. That consultant confirmed that any information that supports the Trust's position that it applies the Hare PCL:SV instrument appropriately, would be through completed assessments that are held individually in the records of each patient who had been assessed using the Hare PCL:SV. The clinician confirmed that there is no central information "that would support the response" ie that is within scope of the request.

20. The Trust says it also explored if there was any relevant information held in its Quality Improvement department and its Research and Development department. The thinking was that these departments may have conducted studies or surveys on the use of the Hare PCL:SV that may support the response. Both departments confirmed they hold no information currently, or historically, about this instrument.
21. The final department the Trust says it approached was its Psychology department. This department identified a central list of tools it may use. The Hare PCL:SV was on that list. The Trust asked for the appropriate person to discuss the use of this tool with, and it was directed back to one of the two consultants who had advised on the original response. That consultant confirmed there is nothing held centrally, and that the list was simply an index of tools that may be appropriate for the service to use. If the Hare PCL:SV was used with a client, the matter would be referred to the above consultants.
22. The Trust confirmed that it had not identified any centrally held information "that support the response to the questions" ie that falls within scope of the request. It confirmed the only information that may support the response is completed assessments held in the clinical records of clients who had been assessed with the Hare PCL:SV.
23. The complainant has not asked for copies of clients' Hare PCL:SV assessments and if, hypothetically, these assessments were to be disclosed to the complainant, the complainant is unlikely to have the necessary background and qualifications to judge from these whether the assessments had been carried out appropriately. Because that is what the complainant has requested - confirmation that the Trust applies the Hare PCL:SV appropriately.
24. The Commissioner considers that the Trust has properly addressed the question asked. She is satisfied that it has carried out appropriate searches and consulted with the relevant individuals and departments on whether any relevant recorded information is held. No relevant information was found. As such, and on the balance of probabilities, the Commissioner is satisfied that the Trust holds no recorded information relevant to the request as framed and has complied with section 1(1) of the FOIA.

Other matters

25. As has been noted, the complainant's question is framed more as a request for confirmation from the Trust. On the face of it, this question could be answered by stating either "Yes, it is" or "No, it isn't".
26. Under section 8(1) of the FOIA a valid request for information is one which: is in writing; gives the applicant's name and address for correspondence; and *describes the information requested*. The Commissioner has published guidance for applicants on how to word a request in order to get the best result¹. The complainant may find this guidance helpful if they want to submit an FOI request in the future.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF