

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2021

Public Authority: Isle of Wight NHS Trust

Address: St Mary's Hospital
Parkhurst Road
Newport
Isle of Wight
PO30 5TG

Decision (including any steps ordered)

1. The complainant has requested information about psychological assessment screening. The Isle of Wight NHS Trust ('the Trust') advised it does not hold the requested information.
2. The Commissioner's decision is as follows:
 - It has become apparent that the Trust has failed to obtain the correct objective reading of the request. In line with the duty under section 16(1) of the FOIA, it would have been reasonable for the Trust to offer the complainant advice and assistance in order to help them describe the requested information. Because it did not do so, the Trust did not comply with section 16(1).
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - The Trust must offer the complainant appropriate advice and assistance so as to enable them to clarify their request; setting out what it needs from the complainant in order to identify the requested information. If the complainant is genuinely seeking specific information, then the onus is on them to engage with the Trust to help ensure the Trust understands what recorded information it is that they are seeking.

4. The Trust must take this step 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

5. On 23 July 2020 the complainant wrote to the Trust and requested information in the following terms:

"[1] Can you please confirm if psychological assessment screening measures that have been introduced into the Island health sector, but may not presently be used by the Isle of Wight NHS Trust, would determine that the Isle of Wight NHS Trust would have to seek appropriately trained people within that particular instrument/tool to be able to understand the results of any findings?

[2] Can you please confirm if psychological assessment screening measures applied by another Trust but held as information within the Isle of Wight NHS Trust files are applied in accordance with empirically established validity and reliability norms consistent with the United Kingdom and generalizability?

[3] Can you please confirm who has the liability for psychological assessment screening measures that have been used by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?

[4] Can you please confirm if the Isle of Wight NHS Trust has any duty as to the accuracy of any psychological assessment screening measures that may have been applied by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?

[5] Can you please confirm the rights to challenge any inaccuracies of data pertaining to any psychological assessment screening measures that may have been applied by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?"

6. On 16 September 2020 the Trust provided a response. It advised that it does not hold information within scope of the request.
7. The Trust provided an internal review on 2 October 2020. It acknowledged that it had not responded to the request within the 20 working days that the FOIA requires. But the Trust upheld the content of its response.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2021 to complain about the way their request for information had been handled.
9. As a result of the submission she received from the Trust, the Commissioner has considered whether the request is a valid request under section 8(1) of the FOIA and whether the Trust complied with section 16(1) of the FOIA.

Reasons for decision

10. 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.
11. Under section 1(3) of the FOIA, where a public authority (a) reasonably requires further information in order to identify and locate the information requested, and (b) has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
12. 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.
13. Section 16(1) of the FOIA places a duty on a public authority to offer an applicant advice and assistance as far as it would be reasonable to expect the authority to do so. That duty extends to occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought.
14. The complainant has framed their request more as a series of requests for confirmation on particular matters, rather than as a request for recorded information. On the face of it, these "requests" could be addressed by the Trust stating either "Yes, we can confirm" or "No, we can't confirm" to each. The FOIA does not oblige a public authority to confirm statements, provide explanations or give opinions.
15. However, having reviewed its response to the request and internal review response, the Trust appears to have considered the request to be

a valid request under the FOIA. This is because it confirmed it does not hold the information requested.

16. The Commissioner instructed the Trust to provide her with further detail on its 'information not held' position. Having been permitted almost eight weeks to provide it, in its submission the Trust confirmed that it considered its response to the request and internal review response were "more than acceptable" given the "very ambiguous" questions the complainant had asked. The Trust also considered that the questions the Commissioner had asked to draw out the detail as to why the Trust does not hold relevant information were either "too vague", "too general" or "not relevant".
17. The submission continued by stating that Trust cannot undertake searches for information within scope of the request "without knowing which particular measures the applicant is referring to", "without first identifying the relevant service speciality" and that "the scope of the request is too wide". The Trust then asks the Commissioner how such a search could be conducted.
18. The Commissioner is surprised that the Trust was able to confirm to the complainant that it did not hold information relevant to the request when it is apparent now that it did not understand what information it was that was being requested.
19. The Commissioner has considered the complainant's request. Part [1] of the request appears to be asking a hypothetical question and, as such, might not be a valid request under FOIA:

Can you please confirm if psychological assessment screening measures that have been introduced into the Island health sector, but may not presently be used by the Isle of Wight NHS Trust, would determine that the Isle of Wight NHS Trust would have to seek appropriately trained people within that particular instrument/tool to be able to understand the results of any findings?
20. However, in the Commissioner's view the Trust could have, for example, asked itself whether it uses any psychological assessment screening measures and, if it does, whether it holds any recorded information – such as a local or national policy - that advises on the processes and training that must be in place for the results of any such measures to be appropriately interpreted. However, it is for the Trust to re-consider this part, put its interpretation to the complainant and ask them to confirm or otherwise whether its interpretation is correct. The Trust should then provide a response to the request, once it is clarified, that complies with the FOIA.

21. Part [2] of the request is as follows:

(i) Can you please confirm if psychological assessment screening measures applied by another Trust but held as information within the Isle of Wight NHS Trust files (ii) are applied in accordance with empirically established validity and reliability norms consistent with the United Kingdom and generalizability?

22. In this part, the complainant appears to be asking whether the Trust holds information about psychological assessment screening measures applied by any other Trust(s) and, if so, whether those measures are applied appropriately. First, the Trust could ask itself whether it holds any recorded information on psychological assessment screening measures as applied by any separate Trust. If it is confident that it does not, the second part of the request is not relevant. In the event that the Trust does hold such information, or considers that it might hold such information, in the Commissioner's view the second part of the request would need to be clarified. The Trust could offer up to the complainant an interpretation of the second part of the request and ask the complainant to confirm or otherwise whether that interpretation is correct. The Trust should then provide a response to the clarified request under FOIA.

23. Part [3] of the request is as follows:

Can you please confirm who has the liability for psychological assessment screening measures that have been used by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?

24. In this part of the request, the complainant appears to be asking whether it is the Trust that created the psychological assessment screening material that is "liable" for it or the Trust that holds that material. In the Commissioner's view the Trust might therefore simply consider whether or not it holds recorded information on the liability situation described in this part of the request. However, again, it is for the Trust to put its interpretation of this part to the complainant and, once that interpretation is confirmed, to provide an appropriate response to this part under FOIA.

25. Parts [4] and [5] of the request are as follows:

Can you please confirm if the Isle of Wight NHS Trust has any duty as to the accuracy of any psychological assessment screening measures that may have been applied by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?

Can you please confirm the rights to challenge any inaccuracies of data pertaining to any psychological assessment screening measures

that may have been applied by another trust, but are being held within the notes/records of the Isle of Wight NHS Trust?

26. Presumably the Trust has obligations under the data protection legislation to ensure that its records are accurate and up to date. As a minimum therefore, the Commissioner would be surprised if the Trust does not hold an associated policy/policies to that effect and which would be relevant to these two parts of the request.
27. Having reviewed and considered the request, the Trust's correspondence with the complainant and its submission to her, the Commissioner's decision is that the Trust did not comply with the duty under section 16(1) of the FOIA. This is because the Trust failed to offer the complainant reasonable advice and assistance to enable them to describe the information being sought in such a way as to enable the Trust to search for it. As the Commissioner has discussed above, the five parts of the request are all potentially valid requests, but the specific recorded information being sought is not clear. The Trust failed to obtain adequate clarification from the complainant. Moreover, it informed the complainant that it did not hold any relevant information despite, apparently, not knowing what information they wanted.
28. The Commissioner appreciates that the Trust has been corresponding with the complainant for a number of years and that they have refused or resisted previous attempts by the Trust to assist them. However, attempting to respond to an unclear request has backfired on this occasion. It has resulted in this complaint to the Commissioner and ultimately caused the Trust more work than was necessary.

Other matters

29. The Commissioner reminds the complainant that the FOIA does not oblige a public authority to confirm statements, give opinions or explanations or to answer general queries. The focus of the FOIA is solely recorded information that a public authority holds. 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 choose to engage with the Trust and to clarify the recorded information they are seeking, and if they submit further requests to public authorities in the future.

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

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: 0203 936 8963
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

Cressida Woodall
Senior Case Officer
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Wycliffe House
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