

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2022

Public Authority: Essex Partnership University NHS Foundation Trust (EPUT)

Address: Legal Services Department
The Lodge
Lodge Approach
Runwell
Wickford
Essex
SS11 7XX

Decision (including any steps ordered)

1. The complainant made a request for information relating Transcranial magnetic stimulation (TMS) referrals. EPUT confirmed that some information was not held (part 1 of the request) and refused to comply with part of the request under section 12 FOIA as it said that it would exceed the cost limit to do so (part 2 of the request).
2. The Commissioner considers that EPUT does not hold any of the requested information under section 1(1)(a) FOIA as part 2 of the request asks for the same information as part 1 just in a slightly different way.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request to EPUT on 11 October 2021:

"1, TMS treatment requests made by Eput vary significantly depending on patient location in Essex, could Eput please explain in detail why this is the case?"

I have added below Eput's own TMS data kindly provided on 22/03/2021

The number of TMS requests made by Eput clinicians
Basildon & Brentwood 13
Thurrock 5
Mid Essex 8
West Essex 2
Castle Point & Rochford 2
Southend 1
North East Essex 2

2, Why for example have Eput clinicians in the Southend area (with a large population) only referred 1 of Eputs patients to Eputs TMS service, when Eput clinicians in the Brentwood Basildon area who have referred 13 patients?"

5. EPUT responded on 18 November 2021 advising that the request did not fall under FOIA. The complainant requested an internal review on 8 November 2021. On 20 December 2021 EPUT provided the result of the internal review. It confirmed it did not hold information in relation to part 1 of the request and that it would exceed the cost limit under section 12 FOIA to comply with part 2 of the request.

Scope of investigation

6. The complainant contacted the Commissioner as he was dissatisfied with the way his request was handled.
7. Having reviewed the wording of part 2 of the request, the Commissioner does not consider section 12 was correctly engaged in this case. This is because even if EPUT were to review all patient files to obtain information as to the reasons why individual patients were or were not

referred for TMS treatment this would not explain more generally the disparity in referrals in different areas in Essex. The Commissioner has therefore considered whether or not EPUT holds any information falling within the scope of parts 1 and 2 of the request.

Reasons for decision

8. Section 1(1) FOIA provides that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

9. The Commissioner has sought to determine whether, on the balance of probabilities, EPUT holds the information requested at parts 1 or 2 of the request.
10. In this case part 1 of the request asks why TMS requests vary depending upon the location in Essex. Part 2 of the request asks the same question but with reference to the number of referrals by EPUT clinicians in contrast to Brentwood and Basildon. Part 2 is therefore also asking why there is a disparity in referrals depending upon the location within Essex.
11. EPUT has confirmed that it does not hold information explaining why referrals vary. However in relation to part 2 of the request, because the complainant has provided the number of referrals in two areas, it has suggested it does hold this information but it would exceed the cost limit to locate, retrieve and extract it. This is because it would have to review all patient files.
12. Even if EPUT were to review all patient files in the Southend area and Brentwood and Basildon area to determine the reasons for referring (or not referring) to the TMS service for each individual patient, this would not provide reasons for the disparity (it would only provide the specific medical notes for each patient). The Commissioner therefore considers that EPUT would be required to create information to respond to part 2 of the request by analysing the medical notes of all patients and then using these to formulate an explanation for the disparity in referrals claimed by the complainant.

13. As a public authority is not required to create information to respond to an FOI request, the Commissioner considers that EPUT should have confirmed that it does not hold the information requested at part 2 of the request given it is asking for the same information as part 1.

Right of appeal

14. 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

15. 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.
16. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF