

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2020

Public Authority: Mersey Care NHS Foundation Trust
Address: Trust Offices
V7, Kings Business Park
Prescot
Merseyside
L34 1PJ

Decision (including any steps ordered)

1. The complainant has made a 110 part request for information relating to electroconvulsive therapy, serious incidents, restraints, seclusion and medication errors. The Trust refused to comply with the requests as it said it would exceed the cost limit under section 12 FOIA to do so.
2. The Commissioner's decision is that the Trust was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the requests. The Commissioner also considers that the Trust provided the complainant with advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 16 April 2020 the complainant made a request for information that contained 110 questions spread across five topics (electroconvulsive therapy, serious incidents, restraints, seclusion and medication errors). Please see Annex A attached.
5. On 20 April 2020 the Trust responded. It refused to comply with the request under section 12 FOIA as it said that it would exceed the cost limit to do so. The complainant requested an internal review on 21 April 2020. The Trust sent the outcome of its internal review on 18 May 2020. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way the request for information had been handled.
7. The Commissioner has considered whether the Trust was correct to apply section 12 FOIA to the requests in this case and whether it complied with its obligations under section 16 FOIA.

Reasons for decision

Section 12 – cost exceeds appropriate limit

8. 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.
9. 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.
10. The appropriate limit for the Trust is £450 or the equivalent of 18 hours work.
11. The Trust has broken the request up into five parts, 22 questions relating to electroconvulsive therapy, 22 questions relating to serious incidents, 22 questions relating to restraints, 22 questions relating to seclusion and 22 questions relating to medication errors.

12. In relation to the topic of restraints, amongst other tasks to answer these questions, the greatest cost relates to questions 7 and 8 regarding diagnosis and ethnicity.
13. The Trust explained that diagnoses and ethnicity are only routinely recorded in the patients' care records. As such, a report that would need to be generated to answer questions 4-6 (at a cost of £25 as it would take an hour's work) would need to be used to manually compare the patients' care records to collate the information.
14. The Trust said that there are 2,153 patient care records that would need to be searched. It estimated that this would take approximately 1 minute to locate each record, 1 minute to retrieve each record and 5 minutes to extract the required information from each record. For 2,153 records, at 7 minutes per record, this equates to just over 250 hours work at a cost of £6,279.58.
15. Given the number of records that would need to be searched (2,153) even if the estimate were reduced to one minute per record it would still equate to over 35 hours work which vastly exceeds the 18 hour cost limit to comply. This is also just two of the 110 questions asked within the request and so the total cost of compliance would be much greater.
16. The Trust has confirmed that the estimate is based on the quickest method of retrieval.
17. Based upon the Trust's submissions, the Commissioner accepts that it would exceed the cost limit to comply with the requests and therefore section 12 was correctly engaged in this case.

Section 16 – Advice and Assistance

18. Under section 16 FOIA the Trust 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.
19. In this case the Trust confirmed that if the complainant reduced the number of requests (possibly down to 10 rather than 110) it may have been able to answer this approximate amount within the cost threshold.
20. As the Trust has provided advice and assistance in this case, by asking the complainant to reduce the number of requests it has complied with its obligations under section 16 FOIA.

Right of appeal

21. 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

22. 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.
23. 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

Please provide ECT information under the FOI act to the following questions: -

1. Please supply patient's information ECT leaflet.
2. Please supply patient ECT consent form.
3. Please supply any ECT reports/investigations
4. How many ECT in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving ECT for the first time?
10. How many patients consented to ECT?
11. How many ECT complaints were investigated outside the NHS and CCG?

12. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?

13. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?

14. How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?

15. How many patients have suffered complications during and after ECT and what were those complications?

16. Have there been any formal complaints from patients/relatives about ECT?

17. If so, what was their concerns?

18. How many patients report memory loss/loss of cognitive function?

19. What tests are used to assess memory loss/loss of cognitive function?

20. Have MRI or CT scans been used before and after ECT?

21. If so what was the conclusion?

22. How does the Trust plan to prevent ECT in the future?

Please provide SERIOUS INCIDENT information under the FOI act to the following questions: -

1. Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.

2. Please supply patient SERIOUS INCIDENT REPORTS consent form.

3. Please supply any serious incident reports/investigations

4. How many SERIOUS INCIDENT REPORTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SERIOUS INCIDENT REPORTS for the first time?
10. How many patients consented to SERIOUS INCIDENT REPORTS?
11. How many SERIOUS INCIDENT REPORTS were investigated outside the NHS and CCG?
12. How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
13. How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?

15. How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?

16. Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?

17. If so, what was their concerns?

18. How many patients report memory loss/loss of cognitive function?

19. What tests are used to assess memory loss/loss of cognitive function?

20. Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?

21. If so what was the conclusion?

22. How does the Trust plan to prevent SERIOUS INCIDENTS in the future?

Please provide restraints information under the FOI act to the following questions: -

1. Please supply RESTRAINTS patient's information leaflet.
2. Please supply patient RESTRAINTS consent form.
3. Please supply any Restraints/investigations
4. How many RESTRAINTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving RESTRAINTS for the first time?
10. How many patients consented to RESTRAINTS?
11. How many RESTRAINTS were investigated outside the NHS and CCG ?

12. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?

13. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?

14. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)?

15. How many patients have suffered complications during and after RESTRAINTS and what were those complications?

16. Have there been any formal complaints from patients/relatives about RESTRAINTS?

17. If so, what was their concerns?

18. How many patients report memory loss/loss of cognitive function?

19. What tests are used to assess memory loss/loss of cognitive function?

20. Have MRI or CT scans been used before and after RESTRAINTS?

21. If so what was the conclusion?

22. How does the Trust plan to reduce restraints in the future?

Please provide SECLUSION information under the FOI act to the following questions: -

1. Please supply patient's information SECLUSION leaflet.

2. Please supply patient SECLUSION consent form.

3. Please supply any SECLUSION reports/investigations

4. How many SECLUSION in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SECLUSION for the first time?
10. How many patients consented to SECLUSION?
11. How many SECLUSIONS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
13. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
14. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?

15. How many patients have suffered complications during and after SECLUSION and what were those complications?

16. Have there been any formal complaints from patients/relatives about SECLUSION?

17. If so, what was their concerns?

18. How many patients report memory loss/loss of cognitive function?

19. What tests are used to assess memory loss/loss of cognitive function?

20. Have MRI or CT scans been used before and after SECLUSION?

21. If so what was the conclusion?

22. How does the Trust plan to prevent SECLUSION in the future?

Please provide MEDICATION ERRORS information under the FOI act to the following questions: -

1. Please supply patient's information MEDICATION ERRORS leaflet.
2. Please supply patient MEDICATION ERRORS consent form.
3. Please supply any MEDICATION ERRORS reports/investigations
4. How many MEDICATION ERRORS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving MEDICATION ERRORS for the first time?
10. How many patients consented to MEDICATION ERRORS?
11. How many MEDICATION ERRORS S were investigated outside the NHS and CCG?

12. How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?

13. How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?

14. How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?

15. How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?

16. Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?

17. If so, what was their concerns?

18. How many patients report memory loss/loss of cognitive function?

19. What tests are used to assess memory loss/loss of cognitive function?

20. Have MRI or CT scans been used before and after MEDICATION ERRORS?

21. If so what was the conclusion?

22. How does the Trust plan to prevent MEDICATION ERRORS in the future?

