

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 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 requested information about the Hare Psychopathy Checklist-Revised. They are not satisfied with the response Devon Partnership NHS Trust ('the Trust') gave to three parts of the request. The Trust considers it has provided the complainant with all the relevant information it holds.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities the Trust holds no further recorded information within scope of parts 4, 5 and 7 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 through the WhatDoTheyKnow (WDTK) website and requested information in the following terms:

1. Can you please confirm that the Hare PCL:SV is a screening tool administered for identifying persons requiring further assessment in the assessment of Psychopathy?
 2. Can you please confirm whether the Hare PCL:SV was designed for diagnostic or predictive use to identify Psychopathy?
 3. Can you please confirm whether the Hare PCL:SV is intended to replace the PCL-R?
 4. Can you please confirm whether informed consent (voluntarily, knowingly, and intelligently agrees to partake in the assessment) is required before an assessment will take place in clinical NHS settings?
 5. Can you please confirm whether an assessee must be apprised with his legal rights with respect to the anticipated forensic service?
 6. Can you please confirm whether an assessee must be apprised with the purpose of the evaluation?
 7. Can you please confirm whether an assessee must be apprised with the nature of the proceedings to be employed?
 8. Can you please confirm whether an assessee must be apprised with how the assessment will be used?
 9. Can you please confirm whether an assessee must be apprised with the party retaining the services of the assessor?"
5. The Trust had originally categorised the request as a vexatious request under section 14(1) of the FOIA and refused to comply with it. That matter came to the Commissioner and in her decision IC-49190-R6T8 she found the request was not vexatious and she instructed the Trust to provide a response to it. On 14 December 2020 the Trust provided a fresh response to the request, addressing the nine questions.
 6. The complainant expressed dissatisfaction with the Trust's response in correspondence to it on 14 December 2020. The complainant's concern focussed on the Trust's response to questions 4 – 7 as they considered the context of the Trust's response to these questions was the Mental Health Act and not its clinical services. The complainant formally requested an internal review on 18 December 2020.
 7. The Trust wrote to the complainant on 21 December 2020. It addressed the points the complainant had raised. It also advised the complainant that their clarification of question 6 suggested that that question related

to the complainant's interactions with the Trust and, as such, would be a data protection and not an FOIA matter.

8. The Trust also advised the complainant that they could appeal against "this decision" by writing to its Chief Information Officer - in effect to request another internal review. As a result, and because of apparent confusion caused by the Trust addressing other requests the complainant had submitted in the WDTK thread associated with the current request, further correspondence between the complainant and the Trust followed. This culminated in correspondence from the Trust on 29 January 2021 in which the Trust relied on section 14(1) of the FOIA to refuse to comply with the complainant's query about the progress of their internal review.
9. The Trust has acknowledged to the Commissioner that its handling of the current request was somewhat clumsy. It has told her that it subsequently apologised to the complainant for the shortcomings in its handling of the request and provided separate responses to the two other requests the complainant had submitted.

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 Trust has advised the Commissioner that the matter raised in question 6 of the current request was subsequently progressed under the data protection legislation. As such, it is out of scope of this FOIA investigation.
12. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Trust holds recorded information within scope of parts 4, 5 and 7 of the complainant's request.

Reasons for decision

13. 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.
14. The complainant has framed questions 4, 5 and 7 as requests for confirmation on certain matters, rather than requests for recorded

information, and the Trust provided narrative answers to these questions.

15. To the extent that the questions can be considered to be requests for recorded information the Commissioner has considered whether the Trust holds recorded information that falls within scope of the three questions. That is, information on: the requirement for an individual's consent to a Hare Psychopathy Checklist-Revised (Hare PCL:SV) assessment; informing an individual being assessed of their legal rights with regard to 'the anticipated forensic service'; and the nature of the assessment proceedings.
16. In its submission to the Commissioner, the Trust says that on receipt of the complainant's request for an internal review, it had approached its Consultant Forensic Psychiatrist and its Clinical Director of Inpatients Secure Services for a view on the request. The Trust considered that these were more senior and appropriate professionals to advise on its response. The Trust says that these individuals answered the specific points raised and confirmed the points were answered from a clinical team perspective. This advice informed the Trust's internal review response of 21 December 2020.
17. The Commissioner appreciates that the complainant is not satisfied with the Trust's response to their questions. She has not considered the veracity or otherwise of the Trust's response. Her focus is the FOIA and from that perspective, the Commissioner must consider whether the Trust holds any information in recorded form that falls within scope of the complainant's three questions.
18. She asked the Trust to clarify its position on any relevant recorded information it may hold. The Trust explained to the Commissioner that the Hare PCL:SV instrument is a framework to "assist its clinicians to score an individual Psychopathic indicator within criminal behaviours". The two doctors it consulted work in the Trust's forensic services. These are medium and low secure units for users of Trust services who have committed a crime and were or became mentally unwell. The Trust confirmed that the two doctors were the most appropriate individuals to advise on the complainant's questions and to advise if the Trust held relevant data.
19. In addition, the Trust has told the Commissioner that it searched its indexed archive storage for information and consulted its finance department for invoices that may have linked to an appropriate area. The Trust says it also contacted its Risk Office where the Policy Officer is situated and its training team. That team could have had a central record that the Trust could have interrogated, and it did hold a record of

previous investigations and complaints about the use of the Hare PCL:SV at the Trust.

20. The Trust has confirmed to the Commissioner that the individuals and teams it consulted were able to clarify what was held and what was not held. This consultation informed the Trust's responses to the questions the complainant has asked. The Trust is satisfied that it explored every possible stream of potential information in order to address the complainant's questions.
21. The Commissioner accepts that the Trust carried out adequate and appropriate searches and consultations in order to identify any information that is relevant to the complainant's questions. The result of those searches and consultations informed its responses to the questions. The Commissioner has reviewed the complainant's questions and the Trust's responses, and, in her view, the Trust has addressed the questions asked. She finds that, on the balance of probabilities, the Trust holds no further recorded information within scope of parts 4, 5 and 7 of the request and has complied with section 1(1) of the FOIA.

Other matters

22. As has been noted, the complainant's questions are framed more as requests for confirmation from the Trust, on various matters. On the face of it, these questions could be answered by stating either "Yes" or "No". The Commissioner reminds the complainant that the FOIA concerns solely the information a public authority holds in recorded form. She 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 FOIA request in the future.

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

Right of appeal

23. 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

24. 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.
25. 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