

PUBLISHED INFORMATION REQUEST

Reference: 10011

Description: Patients - Urology - RCA Reports

Response

Please could I have the following under the FOIA:

Copies (suitably redacted if and where it is deemed appropriate) of all Root Cause Analyses carried out regarding the urology department at UHMBT within the last five years.

On 20 January 2020 you wrote "I received an RCA following an FOI. It was sent by the Information Access Case Officer.

Following our discussions about the ridiculously-redacted RCA regarding the death of PR I did not expect to ever receive anything like this again.

Can I ask for this to be reviewed as a matter of urgency or I will need to do a story about yet another highly redacted FOI response.

The doc is 41MB so it might be quicker/easier if you speak to the Information Access Case Officer and ask to see the report?"

I can confirm that an Internal Review has now taken place, the outcome of which is below.

Introduction

FoI request 10011 was received on 19/10/19. On 27/11/19, the Trust advised it was working on the information requested and this would be provided as soon as possible, no later than 11/12/19.

On 13/12/19, the Trust advised the requester that whilst there were fewer than 30 reports, they totalled in excess of 800 pages. The contents were largely patients' personal data and without their consent, would therefore need to be redacted, at an estimated cost of £4,000. The requester was asked whether they still wanted the Trust to process the request in the circumstances. The responder replied the same day, narrowing the request.

On 17/1/20, the requester chased a response, which they believed had been due on 15/1/20. On 20/1/20, the Trust responded apologising for the length of time it was taking to deal with the request and advising that it hoped to respond by the end of the week.

In fact, the Trust responded substantively to the request on 20/1/20. The Requestor requested a review of the handling of the request the same day.

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CHAIR: IAN JOHNSON
CHIEF EXECUTIVE: AARON CUMMINS

Review

The purpose of an internal review is to make a fresh decision based on the available evidence and not just to review the first decision.

On review, I consider that much of the information in the RCA's is personal data and individual medical information. I further consider that disclosure of this information, combined with information that is already in the public domain, might result in the identification of individual patients and their associated medical information.

Section 41 of the Act allows a public authority to refuse to comply with a request for information where the information was provided to the public authority in confidence. Section 40 of the Act allows a public authority to refuse to comply with a request for information where the information is personal data.

Medical information about individual patients is confidential and, as noted above, confidential information and personal data are exempt from disclosure under the Act. I therefore consider that the Trust was correct in not disclosing the RCA's unredacted.

I have reviewed a selection of the 137 pages of the audit copy of the information disclosed, which shows the redactions. The information redacted appears to relate to names, dates and individual medical information. I therefore consider that the redaction appears to have been appropriately applied.

Conclusion

I consider that disclosure of the RCA's requested, redacted to protect personal and confidential information, was correct. However, I understand the frustration of the Requester, who, after some delay, received information that was so extensively redacted.

With the benefit of hindsight, I consider that it may have been better to have warned the Requester how little information would remain following redaction and, in the spirit of s. 16 of the Act, sought to agree how the request might be focused to enable the maximum amount of information to be provided.

If the Requester would find it helpful, consideration could be given to providing a further response, enumerating the RCA's and the procedures they relate to and summarising the actions taken as a result of these. Information could also be provided regarding the NHSI/E investigation and the extent to which this will consider the incidents forming the basis of the RCA's concerned.

END

A further response was then provided.

Further to the correspondence, which was supplied to you on 13 February 2020, the Associate Director of Corporate Affairs has asked me to provide you with a copy of the full report of the Internal Review. I have therefore attached a copy for your consideration.

[Type text]

Review of Freedom of Information (Fol) Request 10011

Introduction

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On 17/1/20, the requester chased a response, which they believed had been due on 15/1/20. On 20/1/20, the Trust responded apologising for the length of time it was taking to deal with the request and advising that it hoped to respond by the end of the week.

In fact, the Trust responded substantively to the request on 20/1/20. The Requestor requested a review of the handling of the request the same day. The Head of Legal Services was asked to carry out the review on 28/1/20.

Chronology

Date	
19/10/19	By e-mail, the Requester requested: <i>"Copies (suitably redacted if and where it is deemed appropriate) of all Root Cause Analyses carried out regarding the urology department at UHMBT within the last five years."</i>
19/10/19	By automatic e-mail, receipt of the request was acknowledged.
21/10/19	The Fol officer sent the request to the Governance Business Partner for Surgery for action.
21/11/19	The Fol officer sent a reminder to the Governance Business Partner for Surgery, advising that the request had breached the Trust's external deadline on 18/11/19 and asking that the information be provided as soon as possible.
21/11/19	The Governance Business Partner for Surgery advised she had compiled a table of the RCA's, as requested by the Director of Governance, and sent this to the Executive Chief Nurse, the Director of Governance and the Associate Director of Operations for review and was awaiting feedback.
22/11/19	The Executive Chief Nurse provided feedback on the table and queried whether the RCA's could be redacted and released instead of the table.
22/11/19	The Governance Business Partner for Surgery provided an updated table to the Executive Chief Nurse, the Director of Governance and the Associate Director of Corporate Affairs.
22/11/19	The Associate Director of Corporate Affairs advised that while he was happy with the table, the Fol Act may require the redacted RCA's to be released.
26/11/19	The FOI officer advised that the Requester was unlikely to be satisfied with a table listing the RCA's and requested the RCA's and the table.
26/11/19	The Associate Director of Corporate Affairs advised the Chair, CE, MD, Executive Chief Nurse and Director of Governance that he was seeking legal advice on disclosure of redacted RCA's and assistance with

	redaction.
27/11/19	The Trust advised the Requester that it was working on the information requested and this would be provided as soon as possible, no later than 11 December 2019.
27/11/19	The Governance Business Partner for Surgery provided a table with the RCA's embedded to the Director of Governance, Associate Director of Operations and the Deputy Director of Clinical Governance, with a copy to the FoI office.
29/11/19	The Associate Director of Corporate Affairs supplied the RCA's to Capsticks Solicitors to consider exemptions and estimate the cost of redaction.
4/12/19	The Associate Director of Corporate Affairs chased Capsticks Solicitors
5/12/19	<p>Capsticks advised that the cost of redaction would be up to £4,000 for an estimated 28 hours' work. They further advised that arguing that this would represent an unreasonable burden on the Trust (and therefore exempt under s.14) might well not be successful. Capsticks confirmed that much of the data would be exempt under s40 (personal data) or s41 (confidential data) but the remaining information should be disclosed. They also advised that s36 (prejudice to conduct of public affairs) might apply but would need the authority of the CE. With regard to s22 (future publication), advice was that the NHSE/I report was unlikely to cover individual RCA's in detail so this would not apply.</p> <p>It was suggested that the Requester should be advised of the nature and volume of the information requested, to see if a compromise could be reached, but ultimately the options were either to disclose what could be disclosed (accepting this was limited and might leave the Requester dissatisfied) or argue that the burden of responding was unreasonable (accepting this would leave the Requester dissatisfied and might ultimately prove unsuccessful).</p>
13/12/19	The Associate Director of Corporate Affairs asked Capsticks Solicitors to commence redaction
13/12/19	<p>By e-mail letter, the Associate Director of Corporate Affairs responded to the Requester's initial request as follows:</p> <p><i>"I'm writing regarding a recent FOI that you have submitted requesting five years of Root Cause Analysis Reports for Urology. We had anticipated that we would have the information with you no later than 11 December 2019 and I can confirm that we have them and, whilst there is less than 30 reports, they total in excess of 800 pages.</i></p> <p><i>As the contents are all largely the patient's personal data and we don't have their consent to share it wider for this purpose. Being open we also don't have people available to spend what is likely to be two day's work to review and redact every page. This is our problem, not yours, but as it will cost the taxpayer in the region of £4,000 to undertake this review I wanted to double check that you do still want us to process this request?"</i></p>
13/12/19	<p>By e-mail, the Requester responded:</p> <p><i>"I appreciate a significant amount of work would be involved in redacting the reports. As a compromise please can I have all RCAs within the last two years?"</i></p>
16/12/19	The FOI officer advised Capsticks that redaction should be limited to RCA's from the last 2 years only.
23/12/19	RCA's with redactions marked up were provided by Capsticks to UHMB

	with more to follow
24/12/19	Redacted RCA's and a draft letter of response supplied to the Trust by Capsticks
24/12/19	Draft response provided to the Associate Director of Corporate Affairs by the FOI officer
17/1/20	FOI officer asked the Governance Business Partner Surgery if the RCA's had been shared with the families
17/1/20	By e-mail, the Requester chased a response, which they stated they believed had been due on 15/1/20.
20/1/20	By e-mail, the FOI office apologised to the Requester for the delay and advised that a response would be supplied by the end of the week.
20/1/20	The Governance Business Partner advised that all the RCA's had been shared except one, which would now be shared.
20/1/20	Draft response sent by FOI officer to Associate Director of Corporate Affairs and approved
20/1/20	<p>Response sent to Requester as follows:</p> <p><i>"Thank you for your request for information of 19 October 2019. You originally asked for a copy of all Root cause analysis (RCA) reports for Urology for the last five years. We do hold this information; however, as explained by email on 13 December 2019, this amounts to 852 pages of information.</i></p> <p><i>Whilst RCA reports do not include patients' names, they do routinely include dates of birth/ages, the patient's sex, specific dates of treatment, other potential identifiers, and detailed factual of the patient's condition, treatment and other interactions with the hospital. By their nature, they discuss exceptional or unique circumstances. Accordingly, there is a high prospect of re-identification of the patient concerned, with potential negative consequences for the individuals from inappropriate disclosure of such information or re-identification of the individuals concerned. As you will know, information about an individual's health is confidential and the duty of confidence we owe to our patients continues after their death. Such confidential information is exempt under s. 41 FOIA. The ICO has previously taken the view that even in the context of RCA reports; this information is exempt from disclosure (see Decision Notice FS50124800). Where a patient is still alive, this information is 'special category personal data'. The ICO's view is that it almost never will be fair to the patient to disclose this information 'to the world' under FOIA, and this is exempt under s. 41 and s. 40(2) FOIA. Freedom of Information case-law is that where there is exempt information scattered through other information, if it would place a disproportionate burden on the Trust to redact the exempt information, the Trust is not required to comply with the request.</i></p> <p><i>On 13 December 2019 you agreed to narrow your request to RCA reports over the last two years. We have reviewed this information and enclose here a copy of the non-exempt information in the RCA reports for that period. We have sought to balance being transparent and open about the issues covered in the reports, with our duties to the patients as set out above.</i></p> <p><i>Whilst s. 40 and s. 41 are 'absolute' exemptions and we are not required to consider the statutory public interest test, we have considered a balancing exercise around disclosure for the purposes of s. 40, and are</i></p>

	<i>aware of the 'inbuilt public interest test' for s.41. We consider that the appropriate balance has been struck in terms of what is disclosed here, which is the learning for the Trust. This learning has been shared within the Trust, and also we have shared all but one of the RCA reports in full with the families concerned. We are awaiting a mutually convenient meeting date to share the outstanding RCA."</i>
21/1/20	By e-mail, the Requester responded to the Associate Director of Corporate Affairs as follows: <i>"Today I received an RCA following an FOI. ... Following our discussions about the ridiculously-redacted RCA regarding the death of PR I did not expect to ever receive anything like this again. Can I ask for this to be reviewed as a matter of urgency or I will need to do a story about yet another highly redacted FOI response."</i>
21/1/20	By e-mail, the Associate Director of Corporate Affairs acknowledged receipt of the request for review
21/1/20	By e-mail, the FOI office asked the Requester to confirm they wanted an internal review
28/1/20	The request for internal review was referred to the Head of Legal Services.

Duties

- Under the Freedom of Information Act 2000 (the Act) s.10 (1) the Trust is required to respond to Fol requests within 20 working days of receipt of the request.

The request was received on 19/10/19 and a response was therefore due by 18/11/19.

The response was sent on 20/1/20. The deadline was therefore breached.

- Under the Act, in responding, the Trust is required to confirm whether it holds the information requested and to provide the information or issue a refusal notice.

The response dated 20/1/20 confirmed that information was held and provided the information but this was reacted with reference to the exemptions at s. 41 and s. 40(2) of the Act. These requirements were therefore adhered to.

- Under the Act, a refusal notice must state that the information is not being disclosed; specify the exemption which applies; explain why it applies and give due consideration to the public interest (for qualified exemptions).

The response dated 20/1/20 refers to exemption under s. 41 and s. 40(2) of the Act and states that the information refused (i.e. redacted) poses a significant risk of

identification of the patients concerned, and therefore inappropriate disclosure of information about an individual's health. It also confirms that although these exemptions are absolute, the public interest has nevertheless been considered. These requirements were therefore adhered to.

- Under the Act, the response must give details of the internal procedure for complaints about handling of the request and the right to apply to the Information Commissioner for a decision on the handling of the request.

The response dated 20/1/19 specifies that an internal review is available on application to the Associate Director of Corporate Affairs. It also informs of the right to apply to the Information Commissioner and provides contact details. These requirements were therefore adhered to.

Review

The purpose of an internal review is to make a fresh decision based on the available evidence and not just to review the first decision.

On review, I consider that much of the information in the RCA's is personal data and individual medical information. I further consider that disclosure of this information, combined with information that is already in the public domain, might result in the identification of individual patients and their associated medical information.

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Head of Legal Services, 10/2/20