



20th October 2022

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NHS Foundation Trust
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Chair: Sheila Salmon
Chief Executive: Paul Scott

Dear Mr Gordon

RE: INTERNAL REVIEW REQUEST OF FOI RESPONSE

We are writing further your request for an internal review of the handling of your request for information under the Freedom of Information Act 2010 ('FOIA') regarding "[why] TMS treatment requests by EPUT vary significantly depending on patient location in Essex".

Your request for an internal review was made further to the information provided by the Trust on 08 November 2021 in response to your FOI request made on 11 October 2021. Following a request made by you for an internal review the Trust confirmed that it did not hold the information requested on 20 December 2021. On 24 February 2022 you requested a further review of the response provided to you.

On 08 February 2022 the Trust were notified that this request had been referred to the Information Commissioner's Office. We apologise for the delay in responding to your further request for an internal review; whilst the Trust conducted a second review into the FOI response provided to you and again as part of providing information to the Information Commissioner's Office, it was deemed appropriate to await the findings of the Information Commissioner before providing a substantive response. The findings of the Information Commissioner were circulated in a Decision Notice dated 08 September 2022, a copy of which is attached.

The internal reviews found that the Trust did not hold the information you requested and that review of all patient records 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 would be exempt under the section 12 of the FOIA, which allows the Trust to refuse an FOI request where the cost of compliance is estimated to exceed the appropriate limit.

The Information Commissioner has found that the Trust does not hold the information requested because even if all patient records in the Southend area and Brentwood and Basildon area were reviewed 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.

The Commissioner considers that Trust would be creating information 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.

The Trust is in agreement with this finding and accepts that the exercise of reviewing all patient records in the Southend area and Brentwood and Basildon area would simply provide an explanation for why individual patients were referred (or not referred) to the TMS service. This information would be the personal data of other individuals to which section 40(2) FOIA applies, and therefore under s.2(3)(f)(ii) FOIA there is an absolute exemption from disclosure on the grounds that it would contravene Data Protection Principle A.

Furthermore the Trust accepts that such an exercise would fail to provide an accurate response to why there may be disparity in numbers of referrals made in different geographical locations as it would be failing to take into consideration factors such as diseases prevalence, population size and available alternative therapies in each geographical location. The Trust accepts the findings of the Information Commissionaire that the Trust should have confirmed that it does not hold the information requested and that it was incorrect to use the exemption under section 12 of the FOIA.

We appreciate that this may not be the response you were hoping for, however unfortunately the Trust is unable to provide the information you requested as it is not held by the Trust.

As detailed above the Trust is unable to respond any further FOI requests made in relation to referrals made to the TMS service and any possible disparity in their number based on geographical area.

Yours faithfully

Legal Services