Reference: IC-42477-Z7B4

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **30 September 2020**

Public Authority: **North East London NHS Foundation Trust**
Address: **Trust Head Office**
CEME Centre – West Wing
Marsh Way
Rainham
Essex
RM13 8GQ

Decision (including any steps ordered)

1. The complainant has requested from North East London NHS Foundation Trust ("NELFT") information about aspects of its mental health treatment services. NELFT refused to provide the requested information, citing section 12(1) of the FOIA – that the cost of complying would exceed the appropriate limit for compliance.

2. The Commissioner's decision is that NELFT has correctly cited section 12(1) and provided advice and assistance to the complainant in line with its duty under section 16(1) of the FOIA as far as it was reasonable to expect the public authority to do so. However, NELFT breached section 10(1) of the FOIA by not responding within the statutory time for compliance.

3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 16 April 2020 the complainant made a request for information under the FOIA which is reproduced in an annex at the end of this decision notice due to its length.

5. On 17 April 2020, NELFT wrote to the complainant and requested an extension to the statutory timeframe for compliance until 30 June 2020 because staff had been redeployed due to COVID-19. The complainant agreed to this on 18 April 2020.

6. NELFT subsequently refused the request on 4 June 2020 under section 12 of the FOIA because, it stated, the cost of compliance with the request would exceed the appropriate limit. NELFT suggested that the complainant narrow the scope of her request.

7. However, the complainant responded to say that she wanted data from the whole of 2019.

8. On 5 June 2020, NELFT provided a breakdown of the cost/time it would take to comply. It estimated that three parts of the request would take approximately 36.5 hours but was still awaiting an estimate for how long it would take to provide information under 'ECT' and 'Medication'. It was again suggested that the complainant could refine her request.

9. On 6 June 2020, the complainant asked for an internal review.

10. The internal review on 1 July 2020 maintained NELFT's original position.

Scope of the case

11. The complainant contacted the Commissioner on 1 July 2020 to complain about the way her request for information had been handled.

12. The Commissioner considers the scope of this case to be NELFT's citing of section 12(1) and whether advice and assistance had been offered to the complainant.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

13. Section 12(1) of the FOIA states that:

"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

14. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of NELFT. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.[1]

The complainant's view

16. It is the complainant's view that NELFT should have been able to provide the requested information as certain other authorities had been able to

[1] http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf (para 12)

do so. She considered that it was important that this information was gathered and that the issues involved were significant.

NELFT's view

17. NELFT provided the Commissioner with an extremely detailed analysis explaining why responding to the request would exceed the fees limit.

18. **Part one of the request – ECT Information**

NELFT explained that the requested information cannot easily be retrieved. Each patient record would have to be reviewed separately. NELFT would also need to review its serious incident and complaint reports manually using a word search of "ECT" and "Electro". It estimated that it would take approximately 14 hours and 40 minutes to identify and extract the information for the relevant timeframe. However, NELFT stated that it might be able to provide responses to questions 1-11 and question 22 within the appropriate limit.

19. **Part two of the request – Serious Incidents**

NELFT stated that the requested information cannot easily be retrieved as it requires review from multiple sources eg the electronic patient record, complaints system, coroner's reports and its own incident reporting tool. Having reviewed the reports, NELFT would need to cross reference with the sources listed. Some of the data requested requires manual searching within each patient record. NELFT's estimate is that it would take approximately 40 hours and 45 minutes to identify and extract the information.

20. NELFT suggested that it might be able to provide the information requested at questions 1, 2, 4, 5, 6, 8, 16, 17, 19 and 22. NELFT indicated that it would not be able to provide serious incident reports in response to question three because they contain patient identifiable information and, even if the reports were redacted, the nature of the information may lead to the identification of individuals.

21. **Part three of the request – Restraints**

NELFT explained that it would need to review all relevant records to ensure that it has the majority of NHS numbers and manually go though the Excel spreadsheet which would then need to be sent to the performance department for a report to be run. Parts of the request would require each record to be reviewed manually to obtain key details eg CT and MRI scans which are not easily reportable. The reason for this is that these procedures are performed at neighbouring acute hospitals whilst NELFT is a mental health and community provider. NELFT

estimates that a word search within the serious incident reports (confirmed deaths) would take 10 minutes as it would first need to find the serious incident report, then perform the word search and read the section, where relevant. It estimates that it would take 15 hours to identify and extract this information.

22. Additionally, for some parts of the request the reporting in place is unable to produce the information. Originally this information was recorded by the services on a separate system which NELFT did not have access to, so it required manual data in order to report. The services are now populating this information into NELFT's electronic systems and it holds data for Restraints (June 2019) and Seclusions (March 2020) but the information is recorded on different tables within its data warehouse. Analysts would need to work together and dedicate 2-3 days of their time to set up such a report. They would have to pull the relevant tables into a report, set up the relationships and coding and then run quality assurance tests to ensure accuracy. NELFT might be able to provide information within the fees limit relating to questions 1, 2, 4, 16, 17 and 22. However, it would be unable to provide information in response to question three concerning restraints/investigations because the documentation contains patient identifiable information which, due to its nature, may lead to the identification of individuals, even with redaction.

23. **Part four of the request – Seclusions**

NELFT explains that it would need to review all relevant records to ensure that it has the majority of NHS numbers and manually go though the Excel spreadsheet which would then need to be sent to the performance department for a report to be run. Parts of the request would require each record to be reviewed manually to obtain key details eg CT and MRI scans which are not easily reportable. The reason for this is that these procedures are performed at neighbouring acute hospitals as outlined in paragraph 21. NELFT estimates that a word search within the serious incident reports (confirmed deaths) would take 10 minutes as it would first need to find the report, then perform the word search and read the section, where relevant. It estimates that it would take 7 hours to identify and extract this information.

24. Additionally, for some parts of the request the reporting in place is unable to produce the information. Originally this information was recorded by the services on a separate system which NELFT did not have access to so it required manual data in order to report. The services are now populating this information into NELFT's electronic systems and it holds data for Restraints (June 2019) and Seclusions (March 2020) but the information is recorded on different tables within its data warehouse. Analysts would need to work together and dedicate

2-3 days of their time to set up such a report. They would have to pull the relevant tables into a report, set up the relationships and coding and then run quality assurance tests to ensure accuracy.

25. NELFT explained that it may be able to provide information within the fees limit in response to questions 1, 2, 4, 5, 6, 8. 16, 17, and 22. However, it would be unable to provide information in response to question three concerning seclusions/investigations as the documentation contains patient identifiable information that may identify individuals due to its nature, even with redaction.

26. **Part five of the request - Medication Errors**

NELFT states that it would need to review all 774 records to ensure that it has the majority of NHS numbers and it would need to manually go through the Excel spreadsheet, then it would have to be sent to performance to run the report for some parts of the request. The requested information cannot easily be retrieved and will require review from multiple sources eg the electronic patient record, complaints system, coroner's reports and its incident reporting tool. To provide the answers to these questions NELFT would need to review reports and then cross-reference them with the sources above. Some of the data that was requested would require a manual search within each patient record. NELFT estimates that it would take approximately 7 hours to identify and extract this information.

27. NELFT may be able to provide information within the fees limit in response to questions 1, 2, 4, 6, 7, 8, 16, and 17. However, it would be unable to provide information in response to question three concerning reports/investigations as the documentation contains patient identifiable information which, due to its nature, may identify individuals even with redaction.

The Commissioner's view

28. The Commissioner has concluded that NELFT has provided more than enough evidence to support its view that the request exceeded the appropriate limit for compliance. Although she appreciates that the complainant considers that this information should be easily accessible and that other public authorities have provided it, this does not mean that NELFT is obliged to provide it. It is clear that the way the information is held does not straightforwardly lend itself to a response that would fall within the fees limit. The time taken to carry out the permitted activities is, at the Commissioner's estimation, 84.4 hours without factoring in the work of analysts. This is significantly beyond the 18 hours of staff time that the fees regulations allows for. The

Commissioner agrees that NELFT has correctly cited section 12(1) and has provided a detailed analysis of why complying with the request would be impossible within that timeframe.

Section 16 – duty to provide advice and assistance

29. Section 16 of the FOIA states:

> *"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*
>
> *(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

30. The requester was advised on 4 June 2020 that due to the volume and the fact that the data was not readily reportable, the time to locate, retrieve and collate the data would take NELFT outside the appropriate limit under Section 12 of the Act. In total, NELFT says that the request formed 114 questions. The Commissioner understands that the request lists 110 questions but there is more than one question contained in some of them.

31. NELFT advised the complainant on 4 June 2020 that it might be able to provide the information within the fees limit if she narrowed her request. The requester refused to do so and stated that she wanted a response to the entire request.

32. It is the Commissioner's view that NELFT made efforts to provide advice and assistance to the complainant but that she required a response to the whole of her request. As there was no meaningful compromise and the information could not be provided within the fees limit, the Commissioner considers that it carried out its duties *"so far as it would be reasonable"* in the circumstances.

Section 10 – time for compliance with request

33. Section 1(1) of the FOIA states 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."

34. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.

35. The information request was received on 16 April 2020. The public authority asked for longer to respond due to COVID-19 redeployment of staff. In the event, the public authority did not need as much extra time as requested and responded on 4 June 2020.

36. Although the complainant agreed that the response to her request could be delayed, the legislation does not allow for extra time to be taken. NELFT therefore breached the legislation.

Other matters

37. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

38. 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

39. 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.

40. 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 .....

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Information request – 16 April 2020

"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 SERIUOS 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)?

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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"