

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2024

Public Authority: Mid and South Essex Integrated Care Board
Address: Phoenix Place
Christopher Martin Road
Basildon
Essex SS14 3HG

Decision (including any steps ordered)

1. The Commissioner's decision is that Mid and South Essex Integrated Care Board ('the ICB') doesn't hold the requested information about legislation that supported its claimed non-compliance with certain Regulations.
2. The ICB has complied with section 1(1)(a) of FOIA, and it doesn't need to take any corrective steps.

Request and response

3. The complainant made the following information request to the ICB:

"Request for full details of the legislation, including provision(s) relied upon that allowed the body not to comply with 2013 No. 2891 Regulation 4 from 1 April 2014 to May 2023.

As previously confirmed by the body, up until May 2023, that choice was only accessible via body approved exceptional funding.

So both while a CCG and later an ICS."

4. The ICB's final position was that it doesn't hold the requested information.

5. From his own research, the Commissioner understands that "2013 No.2891 Regulation 4" refers to regulation 4 of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013¹.

Reasons for decision

6. This reasoning covers section 1 of FOIA and whether the ICB holds information within scope of the request.
7. Under section 1(1)(a) of FOIA anyone who requests recorded information from a public authority is entitled to be told if the authority holds the information.
8. In their request for an internal review and complaint to the ICO, the complainant referred to a letter they received in 2021 (not from the ICB) in which it was stated that

"...Commissioners have finite resources, ...may put in place arrangements such as single points of access (SPA), prior approval schemes or requirements for patients to make individual funding requests (IFR) for certain treatments which are not routinely funded.

In line with this guidance, the CCG uses the IFR process to enable it to determine whether services it does not routinely commission – including, in your case, alternative acute Mental Health."
9. This suggests to the complainant that the ICB's accountable officers would know what legislation provision they were relying on so as not to comply with "2013 No. 2891 Regulation 4."
10. The Commissioner put the above point to the ICB and had a conversation with the ICB on 13 May 2024.
11. The ICB explained that the complainant has been communicating with it since 2018. They were originally concerned about a service they'd received, but that concern was dealt with, including by the Parliamentary and Health Service Ombudsman.

¹ <https://www.legislation.gov.uk/uksi/2013/2891/contents/made>

12. However, the complainant continues to submit requests to the ICB on broadly the same matter and under a range of names. The ICB provided further information on the complainant's requests and behaviours which the Commissioner has noted but won't include here as it's not strictly relevant to the current complaint.
13. With regard to this complaint, the ICB said it has noted the terms of the request and confirmed that it doesn't hold any relevant information. It has also advised that the letter CP has referred to isn't relevant and anyway, concerns the original concern which has been dealt with.

The Commissioner's view

14. The request is for the legislation that that the ICB relied on in order not to comply with The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013.
15. It's questionable whether the request is a valid request under section 8 of FOIA. That's because it's premised on the idea that the ICB didn't comply with the above Regulations. If the ICB confirmed it held relevant information it would, in effect, be confirming that it didn't comply with those Regulations. That isn't the ICB's position.
16. However, the Commissioner has accepted the request as valid, but he has taken account of the premise behind it. He also notes that the ICB has been responding to the complainant's requests for information about the same matter for approximately five years at the time of the request and would by now have a good understanding of any relevant information it holds. The Commissioner is satisfied, on the balance of probabilities, that the ICB doesn't hold the information the complainant has requested in this case and has complied with section 1(1)(a) of FOIA.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF