



15<sup>th</sup> June 2018

## FREEDOM OF INFORMATION – INTERNAL REVIEW DECISION NOTICE

Dear Requester

### FOI Internal Review (IR) Reference Number: 16996

I refer to your email of 10 May requesting an internal review into NHS Norfolk and Waveney's Commissioning Group's handling of your request for information under the Freedom of Information Act (2000) (FOIA).

For ease of reference a copy of the original request, the CCGs' response and your request for the internal review is attached.

#### **Internal review response**

I can confirm that the internal review panel consisted of the Governance and Operations Manager / Data Protection Officer from NHS Norwich Clinical Commissioning Group who was tasked with reviewing the request and our original response under reference 16996. In reviewing your request and our response the panel considered the guidance on the FOIA as published by the Information Commissioner's Office (ICO).

Please see below a detailed explanation of the CCGs review process and the decision:

Your original FOI request was received 5 April 2018 with clarification received 6 April. Your request was acknowledged on 6 April and the final response was sent 1 May. The panel notes your request was acknowledged in a timely manner and the response was sent within twenty working days of receipt and was, therefore, compliant with the FOIA.

As part of the review you asked for specific points to be addressed; see responses below in [blue](#).

*I wish the reviews to examine the following points:*

1. I was unable to open the appendix, but assume it shows a schematic, that is, the document included no written criteria for diagnosis/NICE standards/etc. Such a document does not represent a clinical diagnosis pathway in any meaningful definition of that phrase. That is, no clinician would be able to use it to diagnose a patient: it is empty of relevant information. If this is the only document Norfolk CCGs have, the correct response would be to advise that Norfolk has no codified diagnostic pathway for adults.

The panel can confirm that having conducted additional searches the document disclosed in our original response is the only information captured by your request relating to *"...the diagnostic and/or referral pathways for adult autism which has been in use in Norfolk for the past two years."* The document is attached to this response.

However to assist you further the panel has concluded that the following information should have been provided in order to understand the clinical diagnostic pathway:

### Scope of the Service

The service provides diagnosis for adults with Asperger syndrome and high functioning Autism living in Norfolk, and provides a package of advice, care, planning and support following a diagnosis. Parents, carers and partners are also supported following a positive diagnosis.

The service also runs informal workshops, information days and therapeutic courses as an opportunity to provide information and share concerns.

To summarise, the service provides support for individuals and their families including:

- Diagnosis, signposting and a follow-up post diagnosis session
- Therapeutic support
- Signposting to appropriate community services and support, including advocacy, housing, benefits and health
- Support to maintain or start a job, including sourcing training
- Dealing with official letters/departments and communicating with other professionals

As the service is limited to diagnosis and follow-on support, there is no referral criteria. As per the schematic, the initial screening is conducted by the GP practice who, based on their clinical judgement will refer their patient into Asperger Service Norfolk. This referral should be supported by the following information from the GP:

- Reason for the referral – including examples of why the GP considers Asperger Syndrome is likely
- Details of any significant problems with social interaction
- Presence of any rigid routines, rituals and/or marked sensory issues
- Details of any obsessive, all-consuming interests
- Details of any current difficulties at home, work, financial, relationships
- Purpose for the referral
- Details of other agencies/service already involved in the individual's health and social care, including learning disabilities / mental health services
- Details of any mental health issues and/or existing diagnoses
- Any known risks associated with the patient

2. The third quote above uses commercial disadvantage as a reason for refusing to disclose information. This, despite the claim in the second quote, that "*The CCGs have no further information to disclose*". Either you have information which you're refusing to disclose on the grounds of commercial sensitivity, or you have no further information. Which is it?

The panel has concluded that the original responses in relation to "*the CCGs have no further information to disclose*" and "*refusal to disclose on the grounds of commercial sensitivity*" are in response to two distinct sections of your aforementioned FOI request.

Section 43 - The panel has concluded that the decision to engage of Section 43 is upheld in relation to your request for "*information referred to in the following email....*" in respect of "*....a review of the current service and the recommendations paper... going to JSCC this month for consideration*".

The rationale for application of Section 43 is set out in the original FOI response dated 1 May 2018. The panel has nothing further to add in this regard.

No further information to disclose - With regard to the quote *"The CCGs have no further information to disclose"*, the panel can confirm that is only in response to the element of your request seeking the following; *"If you have documents" indicating future decisions/potential information held" then please also include them."*

The panel has conducted a further search and can confirm that at the time of your request:

- *No information was held regarding any decisions made by other officers and/or committees relating to the Asperger diagnostic pathway*
- *No information was held regarding plans to put into action changes to the adult autism diagnostic / referral pathways.*
- *No information was held containing documents relating to future decisions / potential information held.*

3. If it is the former, the CCGs' answer in quote 1 is false. If, therefore the CCGs hold further information, a different diagnostic pathway, please disclose it and please disclose its existence.

As detailed above, the panel can confirm that no other pathway document is held. However the panel acknowledges that further information should have been provided to support the schematic. The panel would therefore like to take the opportunity to apologise on behalf of the Norfolk and Waveney CCGs for the omission of supporting information which would have provided some context to the document you have requested.

4. No diagnostic pathway includes commercially-sensitive information. It contains only clinical information. Please can you explain what type of commercially-sensitive information is contained in what I can only assume is this undisclosed pathway, and why such information is within a diagnostic pathway? You've no need to detail the information itself, just the type or kind - I wouldn't want to jeopardise any commercial interest.

As detailed above the engagement of section 43 applies to the element of your request seeking *"...a review of the current service..."* only. It does not apply to the pathway information which was disclosed within our original response.

5. If the pathway does not, in fact, contain such information, please disclose it.

See comments above.

6. Alternatively please disclose the pathway with commercially-sensitive information redacted.

As above, the pathway information held and captured by your request was disclosed within the original response. Further supporting information has been provided within the internal review.

Section 43 was not engaged in relation to the pathway information.

7. The public interest test cited in the last quote; *"it is not believed that this public interest is served in disclosure for damage that would be caused as outlined above."* is a circular argument and therefore cannot be accepted. The public interest test assesses whether information should be released, even if it contains commercial information which might be prejudicial to a party. You are arguing that because the prejudice is to the CCGs, it's not in the public interest to release it. You appear to be equating the public interest with Norfolk CCGs' interest. This must be wrong.

As above, the pathway information held and captured by your request was disclosed within the original response.

Section 43 was not engaged to the pathway information.

8. Finally, CCGs must work to NICE standards. These include the requirement that all NHS patients/service users give consent to any treatment. Consent must be informed consent. To be informed, patients/service users must know and understand the process by which they are being treated. It follows that anyone being assessed for autism must be allowed to see the diagnostic pathway - which must include diagnostic criteria - their clinician proposes to use. Having sight of this - as a service user - is what I was requesting. Quoting the prejudice test is specious. And using the public interest test as a circular argument to raise the prejudice test again is specious. Publishing the diagnostic criteria within the diagnostic pathway must be in the public interest and this public interest must outweigh any other arguments. If Norfolk CCGs do not have such a diagnostic pathway, then they must declare this openly. The ASN has been diagnosing Norfolk residents for years - can you confirm whether or not it has been doing this without any ethics committee-approved or peer-reviewed pathway?

As above, the pathway information held and captured by your request was disclosed within the original response.

Section 43 was not engaged to the pathway information.

**Additionally you asked the following:**

I also wish to ask for an internal review and also a 'less formal review' for the other part of my FoI request, regarding the review undertaken of the current service provided by Asperger Service Norfolk and "*agreements reached*" for what I think the writer means are plans to develop the service for "*a 2019 implementation*".

This has been refused first on the prejudice test.

1. Please send the information requested with commercially-sensitive details redacted.

The panel has reviewed the information captured by your request and as detailed above upholds the original decision to engage section 43 of the FOIA to withhold this information from disclosure into the public domain for the original reasons outlined.

The original response referenced "*a review of the current service and recommendations paper...going to JSCC*". We have reviewed the recommendations paper and can confirm that a redacted version would not answer your request for "*information relating to a review of the current service*".

The panel has also reviewed the minutes from the JSCC meeting referred to in the original response and has concluded that it would be appropriate to engage section 43 in relation to the release of this document. The panel has also concluded that contents of the minutes do not contain any information relating to the review of the current service, merely recommendations as to how the review will be conducted.

2. Alternatively, if you eventually decide you still will not release the information as above, please confirm whether the review was "*of the current service*" as Antek Lejk stated in his email of 14th March, or was a review "*of future service models options [which had] been agreed by commissioners*" as Zandrea Stewart stated in her presentation to the Norfolk Autism Partnership Board on 30th April.

Please note the above response.

We note from an email dated 27<sup>th</sup> May 2018 to Dr Anoop Dhesi that you have made a request for “documents relating to plans for a new autism diagnosis service”, which will be considered by the JSCC on 19<sup>th</sup> June 2018.

The agenda and associated papers for this meeting will be published on the Norwich CCG website, five working days ahead of the meeting, and accessible via the following link:

<https://www.norwichccg.nhs.uk/about-us/joint-strategic-commissioning-committee-jsc/june-19th-2018>

Additionally the panel notes that since receiving your request for a review on 10 May several employees within the CCGs have received emails from you seeking the same information. These include:

- Email dated 22<sup>nd</sup> May 2018 to Dr A Dhesi, which was subsequently directed to the Senior Complaints Manager as the contents of your email raised concerns regarding services for Autism/Asperger Syndrome and the request for an internal review of FOI 16996.
- Email dated 29<sup>th</sup> May 2018 to Jon Punt of SNCCG to acknowledge the redirection

The CCGs have also received previous correspondence from you regarding the same subject matter.

The panel considers that this response regarding the information currently held by the CCGs answers your queries raised to date. The CCGs will therefore consider engaging section 14, which relates to requests considered repeated and/or vexatious, of the FOIA if a request for the same information is subsequently raised.

If you are not satisfied with the outcome of your request for an internal review, you may apply directly to the Information Commissioner for a decision.

The Information Commissioner can be contacted at: Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone 0303 123 1113, email [casework@ico.org.uk](mailto:casework@ico.org.uk)

Yours faithfully

**Christina Jackson**  
**Governance and Operations Manager, Data Protection Officer**  
On behalf of  
Great Yarmouth and Waveney,  
North Norfolk, South Norfolk  
Norwich and West Norfolk CCGs