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Email: NELCSU.foi@nhs.net

18 June 2020

Dear Mr Burton

Re: Freedom of Information request – Internal Review

Reference: FOI.17.MERT206

I am writing regarding your request for an internal review for the request reference detailed above under the Freedom of Information Act 2000 (FOI(A)), which was received by NHS Merton Clinical Commissioning Group (CCG).

Firstly, I was sorry to read that you felt you needed to make a complaint and I hope to address all your concerns. I am the senior manager for the department and independent from the original request. Below I set out the facts of the case before I detail the findings of my review.

You emailed the CCG and requested the following information:

- 1. This is to ask for copies of all correspondence since 1 January 2016 between Merton Council and NHS Merton CCG in respect of the proposals for the Wilson Health & Wellbeing Campus. For the sake of clarity this request relates to correspondence with both officers and members and to all aspects of the proposals (including service provision, public health and town and country planning issues).***

The CCG provided you with the formal response detailed below:

- 1. This is to ask for copies of all correspondence since 1 January 2016 between Merton Council and NHS Merton CCG in respect of the proposals for the Wilson Health & Wellbeing Campus. For the sake of clarity this request relates to correspondence with***

both officers and members and to all aspects of the proposals (including service provision, public health and town and country planning issues).

I can confirm that we do hold information that falls within the description of your request. However, access has been refused on the following grounds:

Section 12 – Exceeds cost limit

Under section 12 of the Act, we are not obliged to comply with a request if we estimate that the cost of determining whether we hold the information, locating and retrieving it and extracting it from other information would exceed the appropriate limit (currently £450 for the CCG). This is calculated at £25 per hour for every hour spent on the activities described.

I have received advice from a staff members within the CCG regarding the potential volume of information relevant to your request and the time it would take to identify and collate it. As your request relates to a major project in which a lot of work was done by a number officers, there will be a high volume of documents falling within the scope of the request. In particular your request, as currently worded, captures a significant amount of email correspondence.

We estimate that there would be well over 1000 emails that relate to the Wilson Health & Wellbeing Campus (WHWC) and could be relevant to your request. On the basis that it would take an average of two minutes to review each email and any attachment/s, and extract any information relevant to your request i.e. 2 minutes x 1,000 totals 2000 minutes, which amounts to over 33 hours. The estimated cost would therefore be £825(33 hours at £25 per hour).

Please note that the estimate is only based on the number of emails from one staff member's account using the search term "wilson". The CCG estimates the total number of emails for all staff members that have done work in relation to WHWC is much higher than 1000.

Please note that as soon as one part of a request exceeds the appropriate cost limit, the entire request should be refused under section 12.

Refining your request

To help bring the cost of responding to your request within the £450 limit, you may wish to consider narrowing its scope by choosing the information which is most important to you, and being more specific.

Examples of the ways in which you might consider narrowing the terms of your request include the following:

- Limiting your request to correspondence between a smaller number of staff members; and*
- Limiting the type of categories of documents you seek. For example, reports and signed letters (not emails) regarding the WHWC.*
-

Please note that any reformulated request we receive will be treated as a new request and we cannot guarantee that it will still be within the appropriate cost limit, or that any relevant exemptions under the Act will not apply to a revised request.

You sent a further refinement of your request in an attempt to bring it under the appropriate limit stating:

- 1. This is to amend my request to restrict it to (1) any report or signed letter relating to communications between Merton Council and NHS Merton in respect of the proposals for the Wilson Health & Wellbeing Campus and (2) any correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department.***

The CCG provided you with the following response:

- 1. This is to amend my request to restrict it to (1) any report or signed letter relating to communications between Merton Council and NHS Merton in respect of the proposals for the Wilson Health & Wellbeing Campus and (2) any correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department.***

I can confirm that NHS Merton CCG has carried out a search of emails of the key members of staff involved with the Wilson Health and Wellbeing Campus and they have found:

- 1. No report or signed letter between Merton council and Merton CCG with regards to proposals for the Wilson Health & Wellbeing Campus.*
- 2. No correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department.*

You requested an internal review of the CCG's decision stating:

I must ask whether you stand by the view that there has been "no correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department" about the proposals for the Wilson Health and Well being campus. This stretches credulity when your response on 13 February 2018 was that "there would be well over 1000 emails that relate to the Wilson Health & Wellbeing Campus (WHWC)". It is also a matter of public record that NHS Merton CCG has made representations to Merton Council's Environment and Regeneration Department on the emerging Local Plan policies for the Wilson site.

On considering your request for an internal review, I have determined the scope of my investigation to be only in relation to your refined request, and the information identified within scope of this request.

The Act states:

Section 1 (General right of access to information held by public authorities)

- (1) '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.'*

In assessing whether the CCG holds the requested information, I have reviewed both your refined request and your original request, but only in so far as is relevant to the investigation of your refined request. I have also reviewed the further explanation and detail you provided in your request for an internal review.

The first point I will address in this review is your statement that states:

"I must ask whether you stand by the view that there has been "no correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department" about the proposals for the Wilson Health and Well being campus. This stretches credulity when your response on 13 February 2018 was that "there would be well over 1000 emails that relate to the Wilson Health & Wellbeing Campus (WHWC)"."

It is important to note that there is a distinct difference in the questions asked between your original request and refined request. This means that the amount of information captured by each request will differ substantially. The first request included all staff and the refined was limited to elected members. This refinement by its very nature dramatically narrows the amount of information captured. I therefore conclude that the responses for your original request and subsequent refined request cannot be used as a cognitive evidence that because information is captured in one request that it will also be captured in a subsequent request.

I will now go on to consider whether the CCG holds information relating to your refined request. I note the limitations of the searches the CCG would be required to conduct based on the refined question of:

"This is to amend my request to restrict it to (1) any report or signed letter relating to communications between Merton Council and NHS Merton in respect of the proposals for the Wilson Health & Wellbeing Campus and (2) any correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department."

When investigating a complaint in which an applicant believes that the CCG has not provided any or all of the requested information, it is seldom possible to prove with absolute certainty either, there is no information or that there is not anything further to add.

I have noted that the Information Commissioner's Office (ICO) will apply the normal civil standard of proof in determining the case, i.e. she will decide on the balance of probabilities whether the information is held. This was established in the case, *Linda Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072; 31 August 2007).

I have further noted the ICO's guidance '*Determining whether information is held 20150527 Version: 3.0*'.

In applying this test, I have considered:

- the scope, quality, thoroughness and results of the searches; and,
- other explanations offered as to why the information is not held.

Factors that would indicate that the information is also held by the public authority include the:

- CCG provides clerical and administrative support for the other person, whether legally required to or not;
- CCG controls access to the information;
- CCG itself decides what information is retained, altered or deleted;
- CCG deals with enquiries about the information; or
- Costs arising from holding the information are included in the CCG's overall budget.

The CCG has provided me with the further reasoning that there are very few elected members who would have had any involvement in the proposals for the Wilson Health & Wellbeing Campus. The elected members who have been identified within scope of this request have conducted searches of their emails, files and folders for information pertinent to your refined request. It has been confirmed that they do not hold information within scope of the refined questions.

Having reviewed the quality and nature of the searches conducted, and the further reasoning, I am satisfied that on the balance of probabilities the CCG does not hold the requested information or further information within scope of your request.

Conclusion

Having regard to the points detailed above I find that the original response is correct. This is because the CCG does not hold information in relation to the refined request.

The outcome of my internal review is that I uphold the CCG's original decision.

I hope that I have addressed all of your concerns, but please do not hesitate to contact me if you have any questions about this response.

The CCG uses feedback it receives from applicants and learning identified through the internal review process to improve its services.



If you are still dissatisfied following this internal review, you have the right under Section 50 of the Freedom of Information Act 2000 to appeal against this decision by contacting the Information Commissioner. The Information Commissioner provides full and detailed guidance on the Freedom of Information Act and on when and how to complain.

Please find below the link to their website page and their helpline number.

<https://ico.org.uk/for-the-public/official-information/>

Helpline number: 0303 123 1113 or 01625 545745

Yours sincerely,

A handwritten signature in black ink that reads 'Kevin Winter'.

Kevin Winter
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