

**THE FIRST TIER TRIBUNAL
EA/2016/00148
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

ON APPEAL FROM A DECISION OF THE INFORMATION COMMISSIONER

B E T W E E N

SUMIT AGGARWAL

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

BEFORE

**Melanie Carter
Dave Sivers
Mike Jones**

1. This is an appeal brought by Mr Sumit Aggarwall (“the Appellant”) against the Commissioner’s Decision Notice FS50612413 dated 9 June 2016 (“the DN”). The appeal is brought under section 57 of the Freedom of Information Act 2000 (“FOIA”) and is in the context of a decision of the NHS Commissioning Board (NHS England), and the Commissioner’s decision in turn to uphold that decision, to refuse to supply information further to a request under the Act.

Background

2. On 19 November 2015, the Appellant requested information from NHS England relating to Targeted Record Card Checks. Those checks are a procedure established by NHS England to audit the work of practising dentists. The request was as follows:

“I am writing with regards to request information about the Targeted Record Card Checks please can you kindly provide the following information

1. *What instructions were given to the Dental Advisers prior/ during the Target Record Card Checks (TRCC)*
2. *How were the record cards chosen for Inspection*

3. *How much payment was made to the Dental Advisers for the TRCC*
 4. *What methodology was used to calculate the monies to be taken back from the Providers*
 5. *How much money was collected as a result of the TRCC*
 6. *What were the agreements terms of the remedial/ breach notice*
 7. *Were any Non disclosure agreements enforced*
 8. *What were the terms of the Non disclosure agreement” (DN §5)*
3. On 16 December 2015 NHS England responded, relying on section 12 FOIA to refuse parts 5, 6, 7 and 8 of the request. It estimated that it would take some 26 hours to comply with those parts of the request.
 4. Further to its obligations under section 16 FOIA, NHS England also suggested to the Appellant that he may wish to refine and narrow his request to parts 1, 2, 3, and 4, in which case it would be able to continue with processing the request.
 5. The Appellant did not take up this suggestion and on 13 January 2016 he requested an internal review. The outcome of that review was provided on the 2 February 2016: NHS England upheld their original position.
 6. On 9 February 2016 the Appellant complained to the Commissioner who duly investigated.
 7. In his DN, the Commissioner found that NHS England was correct to apply section 12 FOIA in this case. He went on to conclude that the public authority had also complied with its obligations under section 16 FOIA in the way that it had dealt with the Appellant’s request. The Commissioner required no steps to be taken.

Legislative Framework

8. Section 12 FOIA provides:
 12. *Exemption where cost of compliance exceeds appropriate limit.*
 - (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.*
9. The appropriate limit for public authorities such as NHS England is £450, based on a maximum charge of £25 per hour, which equates to a total of 18 hours to undertake work to comply with a request.
10. The public authority’s estimate must be reasonable in the circumstances of the case. In making its estimate, the public authority can consider the time taken to:
 - (a) determine whether it holds the information;

- (b) locate the information, or a document which may contain the Information;
- (c) retrieve the information, or a document which may contain the Information; and
- (d) extract the information from a document containing it.

Appellant's Grounds of Appeal

11. The Appellant's grounds of appeal are brief and are set out at section 6 of his Notice of Appeal. They read as follows:

"The Decision notice is wrong, leading to gross injustice.

The Information requested must be provided in full to be logical and make sense.

I believe the crux of the matter is NHS England would not want to provide the information requested primarily to cover up the not fit for purpose NHS Dental Contracts based on targets/UDAs.

Further the Maladministration in the process of implementing the 2006 NHS Dental Contracts would be highlighted.

The brutal attack of Dental Practices by the Targetted (sic) Record Card Checks must be properly inquired into, as such I must impress without the information as a whole the Information requested cannot be logical."

12. It is clear that the Appellant disputes the Commissioner's findings in his DN. However, he has not set out in his grounds any specific reason, other than bald assertion, as to why he says the DN is wrong in law and should be set aside. He has not moreover responded meaningfully to the Commissioner's submissions in this appeal (other than to say that his request would not make sense if only part of the information was provided). As such that Tribunal has no further insight into the Appellant's intended grounds of appeal or material evidence upon which to consider a challenge to the decision under section 12 FOIA.
13. Conversely, NHS England set out, in its correspondence with the Commissioner, a detailed explanation of why it was that section 12 FOIA was engaged in this particular case. In brief, NHS England calculated that to comply with parts 5, 6, 7 and 8 of the Appellant's request would take an estimated 26 hours. A breakdown of the estimate is set out at paragraph 12 of the DN.
14. In the absence of some compelling reason to conclude that the estimate provided by NHS England in relation to section 12 FOIA was either inaccurate or misleading, the Tribunal is of the view that the Commissioner was entitled to rely on that estimate. The Tribunal supported the Commissioner's finding that he was unable to find any reason to conclude that the estimate of time provided by NHS England was flawed; indeed, even it were inaccurate, it appeared that the time taken to respond to the relevant parts of the request would still exceed the appropriate limit by a considerable margin.

15. In his grounds, the Appellant has failed to advance any reason to show that NHS England was not entitled to rely upon section 12 FOIA.

Conclusion

16. In light of the above reasoning, the Tribunal concluded that NHS England had acted lawfully in refusing to supply the information requested and the Commissioner in turn had acted lawfully in upholding that decision in the DN. As such the Tribunal rejects this appeal.
17. The decision of the Tribunal is unanimous.

Judge Carter