First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Information Commissioner's decision notice FS5068867

Appeal Reference: EA/2018/0058

Heard at Doncaster JC
On 25 July 2018

Before

JUDGE CHRIS HUGHES

Between

MARK FLEMING

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

ONE MEDICAL GROUP

Second Respondent

Appearances
The Appellant: in person
First Respondent: did not attend
Second Respondent: did not attend

DECISION AND REASONS

1. The Appellant has been concerned about the Second Respondent, One Medical Group (OMG) for some time and has made information requests to it and complaints about it. OMG provides GP services and urgent care services from 11 centres across the UK.

2. The Appellant made a request for information on 21 April 2017:-

'Please can you provide me with the following information under the Freedom Of Information Act 2000
1. The number of complaints received by One Medical Group over the last 5 years by quarter.
2. An analysis of the above data which confirms which One Medical Group services or practices the complaints related to (eg. Windermere GP, etc)
3. An analysis of the above data which confirms how many complaints were dealt within 30 days, within 60 days, within 90 days etc
4. An analysis of the above data which confirms the gender and age profile of the complainants.
5. An analysis of the above data which confirms how many of the complaints made were found in favour of the complainant in full (ie. successful), how many of the complaints made were found in favour of the complainant in part, and how many were not upheld.
6. An analysis of the above data which confirms how many of the complaints were subsequently appealed.
7. An analysis of the above data which confirms how many of the complaints that were subsequently appealed were successful.
8. An analysis of the above data which confirms how many of the complaints were subsequently referred to NHS England or other statutory body.
9. An analysis of the above data which confirms how many employees were subsequently subjected to disciplinary action, how many resigned, how many were dismissed and how many were referred to the police for criminal prosecution.
I would be grateful if you could send me your full reply within the usual 20 days' time limit.'

3. OMG responded on 17 May refusing the request relying on s12 of FOIA which removes the obligation of 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. It explained that the cost limit of £450 would allow 18 hours work and that the time it would take to compile the detailed analysis given the number of sites and the period of five years would far exceed this amount of staff time. OMG offered to provide information for one site, the one mentioned in the request.

4. The Appellant rejected this suggestion on 29 June 2017 accusing them of intransigence and stating that:-

"I can only assume that One Medical's continued refusal to cooperate is a direct result of the discovery of evidence of unlawful (criminal) behaviour within your organisation. There is no other credible explanation"

5. The Appellant complained to the First Respondent (the IC) about the failure to provide the information requested and what he considered to be deficiencies in OMG's policies and procedures. As a preliminary step the IC explained that FOIA did not "require public authorities to generate information or to answer questions provide explanations or give opinions, unless this is recorded information that they already hold." The IC noted the Appellant's criticisms of OMG for not having tailored FOIA and DPA policies (it stated that it relied on NHS guidance) but noted that this was a decision for the organisation. She would encourage OMG to make relevant policies and procedures more easily accessible.

6. The scope of her investigation was whether OMG was entitled to rely on the s12 exemption as a basis for refusing the requested information. In its response to her of 18 February 2018 OMG confirmed that the information was dispersed:-

   "The last years data, contained within data sheets, is held and maintained on an individual site basis. Minor complaints are kept on file at individual site and past years complaints may be archived either electronically or in hardcopy. Complaints dealt with at a group level are kept in hardcopy form at our central Support Office in Leeds."

7. The response detailed the steps required to find and collate the information requested across all sites. It provided an estimate for determining whether the information was held with respect to one site:-

   "Complaints held within complaint trackers maintained by the organisation and insurer are fully anonymised. This information is not currently kept on organisation collated complaints trackers, nor on the insurer. Currently our complaints trackers document the date of complaint, initial response date and the date at which the complaint was closed.
   This would be relatively simple to deliver where complaints are kept on a complaints tracker and would take 15 minutes per tracker per site. For FY 17/18 this would take around 3 hours. In the case of archived complaints this would require reviewing each individual complaint file to establish whether this data is held. This is likely to require at 15 minutes per complaint file. Potentially, based on the complaints received by 17/18 for a single service (Derby Urgent Care Centre FY17/18, 25 complaints) this would require 6.25 hours per site per year of complaints...."

8. In her decision notice the IC (paragraph 12) set out the actions a public authority had to take before coming to the conclusion that the cost of complying with the request would exceed the statutory limit:-

"12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

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

9. She then reviewed the information provided by OMG to support its conclusion (decision notice paragraphs 15-22) and noted that OMG had explained to answer questions 4,8 and 9 would require 15 minutes per file (relying on the Derby example) resulting in a requirement of 6.25 hours per site per year and that with respect to questions 5,6 and 7 OMG had explained that:-

"'all complaints are dealt with in line with NHS England complaint guidance. The focus on complaints is regarding understanding the complainants concerns and share learning and are not classed as successful or unsuccessful. As such data for requests 5-7 does not exist'

10. She noted that OMG had estimated the total minimum time required as 56 hours and considered that with multiple sites and years the figure could be considerably higher (paragraphs 24-28) and she concluded that OMG were entitled to rely on s12.

11. The Appellant's grounds of appeal were brief, that the calculation of time was skewed in favour of OMG and the work could be done in less than 18 hours. He further argued that OMG could have provided him with copies of summarised complaints data that already existed. In resisting the appeal the IC noted that the Appellant had provided no specific reason why s12 was not engaged, he had asserted but not explained why this was the case. OMG resisted the appeal setting out some background issues relating to its dealings with the Appellant, providing more a more detailed analysis of the costs explicitly calculating the impact of multiple sites and multiple years and coming to a time estimate of 629.75 hours with an associated cost of £15,743.75. OMG responded to the Appellant's comment that it could have offered to provide such summaries as existed by noting that the Appellant had advised him that he could make a narrower request. OMG's Chief Medical Officer, WJR Dawson, provided a witness statement confirming the basis of OMG's case.

12. In his oral argument the Appellant criticised the IC for resisting the appeal claiming that the IC had not sense checked OMG's submissions when she came to her decision. He submitted that it was not credible that an organisation would not know what was going on at 11 sites and suggested different trends which he expected such an organisation to analyse from its records. He considered that annual reviews of OMG by the NHS would look

at trends in data and the needs of patients. He stated that, as an accountant he could in two hours have carried out analogous analyses of trends across, for example 11 stores looking at the impact of the World Cup on sales of football boots. He considered that it was entirely reasonable to expect that there was an analysis of the age profile of complainants. He did not accept that OMG would have to carry out a manual analysis of its records. He considered that OMG were lying. He expressed his views of what he considered should have been carried out by way of analysis of the complaints data and that to suggest such analyses had not been carried out *"beggared belief"*. He considered the calculations of the time required to collate the information from the Derby practice as grossly exaggerated and was convinced that the basic data was already available. He stated that he had sat in the offices of OMG and seen demographic data on its sites on a display board, however he acknowledged that this was not a complaints analysis. With respect to the offer of advice to make a more restricted request for information he stated:- *"How arrogant, conceited are they?"*. He felt that they had *"just played games"*. It was inconceivable that the data had never been analysed, and that OMG *"had not said that they don't routinely analyse complaints data."* He concluded that he *"can't work out which lie to respond to, OMG don't want to be examined."*

Consideration

13. Two issues are raised by the notice of appeal; first whether the OMG were entitled to rely on s12 on the grounds that the time required exceeded the time available within the costs limit and secondly whether OMG had complied with their duty under s16 FOIA:-

    "16 Duty to provide advice and assistance.

    (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."

14. In considering the first issue, whether the cost limit would be exceeded; there are two competing positions. The Appellant based his argument on what would be possible if the relevant data were stored in a searchable database analogous to the supermarket sales ledger capable of tracking the sales of items of footwear across a number of shops. Given that paradigm he is correct such a ledger could well be able to provide a breakdown of sales of football boots broken down by such characteristics as manufacturer, style, size and the shop and date of sale.

15. However, the explanation given by OMG and accepted by the IC paints a very different picture. Some key attributes of the arrangements are set out at paragraphs 6 and 7 above. The IC analysed the task involved in providing an estimate of the cost of responding to a FOIA inquiry (DN paragraph 12) and applied that to the information provided by OMG and concluded that if anything OMG had underestimated the probable time. While the Appellant

stigmatised the IC's approach as failing to sense check what she had been told; the underlying position he adopted was that he did not accept that the records were kept in the way described. He was entirely unwilling or unable to engage with the detail of the calculations and the time estimates embedded within them. I am satisfied that the estimates provided were entirely credible and the approach of the IC was correct. The IC's position is supported by the witness statement containing a statement of truth signed by Dr WJR Dawson. I accept the veracity of that statement. There is no proper basis upon which the Appellant can make his defamatory accusations.

16. The Appellant made a detailed request for information. Since the data he sought was not held within a simple database in the form he required it but dispersed the time required to collate it would far exceed the time available. This ground of appeal must fail.

17. The second ground of appeal is that OMG were in breach of their duty under s16(1) to provide advice and assistance. The argument would be that, having determined that the request as made was too extensive, it should have offered the Appellant something. In his grounds of appeal he suggested complaints summaries could have been provided.

18. The difficulty with this ground of appeal is that OMG made a suggestion identifying information it could provide in response to a more restricted request. Picking up on the identification of one specific practice in the request it offered to provide information on that site. The Appellant's response was to reject that offer in a confrontational and abusive manner. He did not respond to a reasonable offer (which on the evidence before me would also have exceeded the costs limit) by accepting it, or modifying or limiting his request in some other way or with a counter proposal seeking, for example, existing analyses of complaints, but rejected the proposal out of hand. The evidence is clear that OMG made a proper attempt to assist which was rejected. OMG did what it was reasonable to expect them to do in the circumstances. OMG discharged its duty under s16(1).

19. I am satisfied that the IC's decision is correct in law and this appeal is dismissed.

Chris Hughes

Judge of the First-tier Tribunal
Date: 3 August 2018