

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 August 2010

Public Authority: Liverpool NHS Primary Care Trust
Address: 1 Arthouse Square
61-69 Seel Street
Liverpool
Merseyside
L1 4AZ

Summary

The complainant requested information relating to the number of staff employed at Liverpool Primary Care Trust (the "Trust") and recorded incidents of stress, bullying, claims of constructive dismissal and claims filed against the Trust at the Employment Tribunal. The Trust agreed to the provision of some information but stated that the remaining requested data could not be recovered within the appropriate cost limit at section 12(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner is satisfied that the Trust was entitled to refuse the request under section 12(1) of the Act. He therefore does not require the Trust to take any steps.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 February 2009, the complainant submitted the following information requests to Liverpool Primary Care Trust ("the Trust") via the whatdotheyknow.com website:

1. *"I would like to know how many employees of the Trust have been absent from work due to either stress, anxiety, depression any combination of those ailments between 1st August 2004 and 31st July 2008."*
 2. *"Please also confirm how many complaints of bullying have been made by employees of the Trust against managers or colleagues during the same period."*
 3. *"Please confirm how many employees have claimed constructive dismissal within the same period."*
 4. *Please confirm how many claims have been filed against the Trust at the Employment Tribunal within the same period."*
 5. *"Please confirm how many people actually work for the Trust. This will include agency/bank/and contract staff."*
3. The Trust responded to the request on 13 March 2009. It confirmed that it did hold some of the information requested but stated that, as the cost of compliance would exceed the appropriate limit, it was not obliged to provide the information under section 12 of the Act. The Trust therefore advised that the complainant may want to refine her request, for example by focusing on one specific part of the request, so that the cost-ceiling would not be exceeded.
 4. The complainant subsequently contacted the Information Commissioner on 30 March 2009 to ask that he consider the refusal. In reply, the Commissioner informed the complainant on 21 April 2009 that he would normally expect a public authority to have undertaken an internal review of its refusal before he would look to intervene.
 5. After a further exchange of emails in November and December 2009 between the complainant and the Trust, the complainant asked the Trust on 29 December 2009 to review its refusal to provide the requested information.
 6. The Trust informed the complainant of the findings of its internal review on 18 January 2010. This upheld its original decision that section 12 would apply. Nevertheless, the Trust decided that, while not required to do so under the Act, it would interrogate its electronic systems in order to provide some of the requested information.
 7. In relation to part 5 of the request, the Trust confirmed that the total number of permanent staff it employed was 3092, although it stated that it was not in a position to include details of agency workers or contractors. In addition, the Trust informed the complainant that it was currently working on collating information in respect of part 1 of the request.

The Investigation

Scope of the case

8. On 19 January 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the Trust's failure to assist her when processing her information request.
9. The Commissioner is aware that the Trust has agreed to provide some information relating to parts 1 and 5 of the request. The Commissioner has therefore sought to clarify with the complainant whether she wishes these parts to be included as part of his investigation. As the complainant did not indicate that the case should be progressed on this basis, the scope of the Commissioner's investigation is limited to determining whether the Trust was entitled to rely on section 12 in relation to the outstanding parts of the request, namely parts 2 – 4.

Chronology

10. On 3 February 2010, the Trust emailed the complainant with staff absence figures relating to part 1 of the request. This followed on from the earlier correspondence sent to the complainant on 18 January 2010, referred to in paragraphs 6 and 7 above. The Trust also set out in greater detail why it considered section 12 would apply to parts 2 – 4 of the request.
11. On 23 February 2010, the Commissioner contacted the complainant by email. This included his preliminary reading of the complaint.
12. On 8 March 2010, the complainant emailed the Trust to ask that it continue to work on providing the information until the appropriate limit had been reached. The complainant also included the following clarification of her request:

"I would also clarify when I mentioned constructive dismissal, I was referring to the employee directly, similar point about bullying and harassment complaints, there is no Employment Tribunal claim called 'bullying and harassment.' This will usually form part of a claim for unfair dismissal or one (or more) of the various discrimination claim and/or under the Protection from harassment Act."
13. The Commissioner emailed the complainant again on 11 March 2010 to ask that she respond to his earlier correspondence of 23 February 2010. The Commissioner also informed the complainant of his view

that, where a public authority estimated that the cost of compliance would exceed the appropriate limit, it would not be obliged to undertake work up to that limit.

14. On 11 March 2010, the complainant advised the Commissioner that she considered that the Trust had not discharged its duty under section 16 of the Act. In addition, she argued that there were no grounds to support the assertion that a public authority should not be required to work up to the cost limit. In response, the Commissioner emailed the complainant on 12 March 2010 a summary of the scope of the case that he proposed taking forward.
15. On 22 March 2010, the Commissioner contacted the Trust to ask that it explain in greater detail the basis of its cost-estimate. The Trust subsequently responded on 20 April 2010. The Commissioner telephoned the Trust on 4 May 2010 and 25 May 2010 to enquire about a number of issues arising from its response.

Analysis

Substantive Procedural Matters

Section 12 – cost of compliance exceeds appropriate limit

16. Section 12(1) of the Act provides that public authorities do not have to comply with a request where the estimated costs of responding to that request exceeds the appropriate limit as specified by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Regulations”).
17. Section 4(3) of the Regulations sets out the basis upon which an estimate can be made:

“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –

 - (a) determining whether it holds the information,*
 - (b) locating the information, or a document which may contain the information,*
 - (c) retrieving the information, or a document which may contain the information, and*
 - (d) extracting the information from a document containing it.*

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per hour."

18. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Trust. This is equivalent to 18 hours work.
19. Section 12(4) of the Act provides that in certain cases a public authority can aggregate the cost of complying with these requests. As part of the statutory instrument associated with section 12(1) of the Act, section 5 of the Regulations sets out the circumstances in which it may be appropriate to aggregate requests.
20. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:
 - by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - for the same or similar information to any extent; and
 - the subsequent request is received by the public authority within 60 working days of the previous request.

The Trust's position

21. The Trust has argued that the time needed to locate and retrieve all of the relevant information captured by the scope of parts 2 – 4 of the request would be more than 18 hours.
22. In order to support this position, the Trust provided the Commissioner with the explanation set out below which describes how it would locate and retrieve the requested information.
23. In providing this explanation, the Trust noted that as the information covered by the three parts of the request is held in the same basic format, in practice any search to identify the information needed to fulfil one request would involve the same kind of activities required to fulfil the other requests. Therefore, while the Trust has stated that it would be entitled to aggregate the requests in line with section 12(4), the explanation which follows effectively represents the process needed to fulfil each of the requests.

24. The Trust has stated that, for each part of the request, any relevant information would be expected to be formally recorded within Human Resources personnel files, which would also include other staff management details. This additional information would typically consist of contracts, job descriptions, sickness absence details, disciplinary details, communications, personal development plans and any other relevant workforce information.
25. As part of its explanation, the Trust has identified the history of the Trust as a factor militating against the easy access to the requested information. The Commissioner has been informed that from approximately February 2002 until October 2007, Liverpool had three autonomous primary care trusts (South, Central and North). From October 2007, the three organisations merged to form one legal identity – Liverpool Primary Care Trust. Owing to the development of the Trust, historic records have been archived at various separate locations.
26. Until around April 2008, the North, Central and South PCTs utilised a Human Resources Shared Service but each organisation recorded and managed each of its cases independently and stored this information in line with local management recommendations. According to the Trust therefore, *“there is a central repository of information and a ‘local file’ which in order to provide an accurate response would need to be merged to avoid duplication of recording.”* Although there are three main hub locations for personnel files, there are up to 30 other sites where files may be stored.
27. The Commissioner has been informed that since July 2008, there has been a move in the Trust to improve and increase the information held by central Human Resource teams, with better standards of *“formal case logging and record keeping”* introduced. However, this improvement would not help the Trust extract the requested information for the period in question.
28. To assist the Commissioner, the Trust has provided a detailed breakdown of the work that would need to be undertaken to retrieve the requested information.
29. The Trust firstly confirmed that each Human Resources personnel file would only be kept in paper form. Depending on how any issue is dealt with, it is possible that information may be retained in a local file – namely, one maintained by the North, South and Central PCT – and / or on a personnel file held centrally by the Trust’s Human Resources department.

30. As a best case scenario, the Trust has based its estimate on any relevant information being stored in a central file, although it notes that this is unlikely to be the case. Nevertheless, based on an analysis of its central systems, the Trust has calculated that it would need to examine around 4100 personnel files.
31. The Commissioner understands that each file will ordinarily be arranged in chronological order and not partitioned to be able to allow the easy identification of the requested information. The Trust has therefore stated that it would have to review every sheet of paper contained in a file for data collection purposes.
32. The Commissioner has queried whether, in regards to claims of constructive dismissal and referrals to the employment tribunal, this information would be kept in locations other than the personnel file. For example, it may be the case that the Trust's legal department would field any specific grievances submitted by an individual.
33. The Trust has stated that while a grievance claim was live, any relevant information may be stored separately and maintained by the employee dealing with the case. However, at the conclusion of each claim, all information would be returned to the personnel file. The Trust has therefore suggested that there would not be a separate records bank that could be searched for any pertinent information.
34. Although not carried out at the time of the request, the Trust has carried out a sampling exercise of the records. This found that:

"When inspecting one central store of files, visual inspection showed the average thickness of a file would be 2cm thick. A random sample (of 20 records) when extracted from the central store and measured were 1.8cm thick.

Although this did not occur initially ten sets of centralised records were reviewed to see how long it would take to read each page, interpret the information and log any details of the required information; this took on average 8 minutes per record."
35. Drawing from its sampling exercise, the Trust surmised that as it would need to interrogate 4100 files, at 8 minutes per file, an optimistic estimate for compliance would equate to 547 hours.
36. As referred to in paragraph 27, the Commissioner understands that the Trust has recently taken step to improve its records management procedures, and is considering expanding its Electronic Staff Records software system. As a means to manage payroll services, the database

currently monitors staff sickness and absence which, as seen in paragraphs 7 and 10, allowed the Trust to produce certain relevant data captured by the original request. However, at the time that the request was made, this system did not store information from which data relating to parts 2, 3 and 4 of the request could be drawn.

The Commissioner's position

37. In considering whether the Trust's estimate for compliance is in accordance with section 12(1), the Commissioner has endorsed the approach taken by the Information Tribunal in *Alasdair Roberts v the Information Commissioner (EA/2008/0050)*. In its decision, the Tribunal proposed that in order to determine whether an estimate was reasonable the following points should be considered:
- A public authority has only to provide an estimate rather than a precise calculation.
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3).
 - Time spent considering exemptions or redactions cannot be taken into account.
 - Estimates cannot take into account the costs relating to data validation or communication.
 - The determination of a reasonable estimate can only be considered on a case-by-case basis.
 - Any evidence should be sensible, realistic and supported by cogent evidence.
38. Bearing these guiding principles in mind, the Commissioner takes the view that the estimate provided by the Trust is a realistic one and illustrates that the cost of complying with the request would significantly exceed £450.
39. In coming to this decision, the Commissioner believes that the Trust would be entitled to aggregate parts 2 – 4 of the request for the purposes of section 12(4) of the Act. This is because, in accordance with section 5 of the Regulations, each part of the request:
- was submitted by one person;
 - asked for similar information; and
 - was submitted within 60 working days of the previous request.
40. The Commissioner is prepared to accept as reasonable the Trust's contention that it does not, nor is it required to, hold the requested information outside of personnel files. Accordingly, in deciding that compliance with parts 2 – 4 of the request would exceed the

appropriate limit, the Commissioner has considered the significant number of records which would need to be examined in an effort to collate the requested information. The Commissioner is also mindful that the manner in which the personnel files were stored – that is, potentially over a number of sites – could also be a factor in the time taken to process the request.

41. In her correspondence with the Commissioner, the complainant has asserted that the Trust should be required to search through the relevant personnel files until it has exhausted the £450 cost limit. The Commissioner, however, does not accept that section 12(1) contains any such obligation. Nevertheless, the Commissioner acknowledges that where section 12(1) is applied by a public authority, section 16 imposes a duty to provide advice and assistance to an applicant in order to help them access at least some of the information they seek. The Commissioner addresses this issue below.

Section 16 – advice and assistance

42. Section 16(1) of the Act requires a public authority to provide advice and assistance to an applicant so far as it would be reasonable to expect the authority to do so.
43. Section 16(2) of the Act states that, in relation to the provision of advice and assistance, a public authority will have complied with section 16(1) of the Act if it has conformed with the Code of Practice issued under section 45 of the Act (the “section 45 Code”).
44. Paragraph 14 of the section 45 Code states:

“Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the “appropriate limit” (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.”
45. The Commissioner is aware that, having found that section 12(1) applied, the Trust advised the complainant that it may be more likely that the request could be processed within the cost-limit if she focused on the same categories of information but for the previous 6 month period. As an alternative, the Trust suggested that the complainant may also wish revising her request for one category of information

covering the past 12 months. Again, this would increase the likelihood that information could be provided within the cost threshold.

46. The Commissioner recognises that, given the way in which the information is stored, to compile information of the nature requested for any period between 1 August 2004 and 31 July 2008 would be time-consuming. Therefore, in view of the changes made to improve its records management since July 2008, the Commissioner believes that the Trust's guidance to concentrate her request on the period following July 2008 seems reasonable.
47. The Commissioner, however, is not convinced that the second part of the Trust's advice – namely, to focus the request on one part of the request for the previous 12 months – would prove helpful to the complainant. This is because, according to the Trust's own explanation, to compile any information from February 2008 (12 months from the date of the request) would still involve the checking of each personnel file from that date until July 2008 – when the new records management system was introduced.
48. Nevertheless, the Commissioner has considered that, under the section 45 Code, a public authority need only consider *"providing an indication of what, if any, information could be provided within the cost ceiling."* As the Trust has met this requirement in this case, the Commissioner is satisfied that the Trust discharged its duty to provide advice and assistance under section 16(1). The Commissioner is also mindful that, although not obliged to do so, the Trust did endeavour to provide information relating to parts 1 and 5 of the request.

The Decision

49. The Commissioner's decision is that the public authority was entitled to refuse to comply with the complainant's request under section 12(1) of the Act.

Steps Required

50. The Commissioner requires no steps to be taken.

Right of Appeal

51. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 31st day of August 2010

Signed

**Rachael Cragg
Group Manager Complaints Resolution**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that -

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.

Section 1(2) provides that -

Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

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.

Section 12(2) provides that –

Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

Section 12(3) provides that –

In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

Section 12(4) provides that –

The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or

- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

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.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

The appropriate limit

- 3. - (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

Estimating the cost of complying with a request – general

- 4. - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

Estimating the cost of complying with a request - aggregation of related requests

5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971[4] in any part of the United Kingdom.