

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2012

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle-upon-Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant requested the disclosure of the qualifications held by employees at the Care Quality Commission (the "CQC"). The CQC confirmed it held the relevant information but refused to comply with the request on the basis that to do so would exceed the appropriate cost limit (section 12(1)).
2. The Commissioner has found that the CQC was correct to apply section 12(1).
3. The Commissioner requires no steps to be taken.

Request and response

4. On 27 May 2011, the complainant wrote to the CQC and requested the following information:
 - The number of site visits conducted by the CQC in the last two years.
 - A breakdown of CQC employees by profession, detailing the qualifications that they hold.
 - The details of particular legal advice provided to a named employee at the CQC.
5. The CQC responded on 20 June 2011 and released information to the complainant except in relation to the qualifications of employees where

it explained it could not satisfy the request within the cost limits (section 12(1)).

6. On 24 June 2011 the complainant wrote to the CQC and asked for an internal review to be carried out.
7. Following an internal review the CQC wrote to the complainant on 10 August 2011. It upheld its position that disclosure would exceed the cost limitations and refused to disclose the information (section 12(1)). The CQC also argued that the information would be exempt as qualifications constitute third party personal data (section 40(2)).

Scope of the case

8. On 26 May 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The complainant argued that the information should be, to the contrary, "*at the fingertips*" of a public authority such as the CQC. The complainant also argued that there was an "*overbearing and undeniable*" public interest in disclosure in order to discover whether or not CQC employees were appropriately qualified in their roles.
10. Therefore the scope of case will be to consider the CQC's use of the cost limit exemption, as set out in section 12 of the FOIA, and in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"), and its application of section 40(2) of the FOIA.

Reasons for decision

11. Section 4(3) of the Fees 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."

12. The Fees 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 CQC. This is equivalent to 18 hours work.
13. Section 12(1) of the FOIA provides that public authorities do not have to comply with requests where the estimated cost of complying exceeds the appropriate limit as specified above.
14. The CQC's estimate of the time it would take to comply with the request included the following factors:
 - There were 1700 members of staff at the time of the request.
 - It would take 20 minutes on average for each staff member to provide information about their qualifications.
 - This would amount to 34000 minutes or 567 working hours, at a cost to the CQC of £14,150.
15. The CQC confirmed that having employees submit the qualifications they hold would take less time than for the CQC to access personnel files in all the circumstances.
16. The CQC stated that accessing individual applications forms - held electronically on the NHS Jobs portal - would take longer than the 20 minute per person estimate, given the intricacies of the IT system.
17. The CQC went on to explain that when an applicant is offered a position, it "*would usually take a copy or a note of their relevant qualifications*". These records, however, are not held on the electronic HR system but held instead as paper files. The CQC argued that extracting this information from 1700 individual files - bearing in mind this process would need to be performed with the appropriate care required to ensure that records from the files were not lost, damaged, or misfiled – would, again, take longer than the 20 minute per person estimate.
18. The Commissioner questions whether it would take 20 minutes on average for each staff member to provide information about their

qualifications. However even if this figure was significantly reduced to 5 minutes on the basis of 1700 employees this would still exceed the 18 hour limit. The Commissioner is therefore satisfied that the CQC has identified the quickest method to locate, retrieve and extract the information

19. After considering all the arguments relevant to the cost limit exemption, the Commissioner is satisfied that the disclosure of information within the scope of the request would exceed the 18 hour limit.
20. In reaching his decision, the Commissioner considers that any estimate should be sensible, realistic and supported by cogent evidence.¹ Bearing this in mind, the Commissioner has concluded that the CQC applied the exemption at section 12(1) correctly.
21. Section 12 is an absolute exemption and is not subject to a public interest test. Therefore, the Commissioner cannot consider public interest arguments that support the disclosure.
22. As the Commissioner considers that the CQC refused the request on section 12 correctly, there is no need to consider its application of section 40(2).
23. Section 16(1) of the FOIA provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so.
24. The Code of Practice issued under section 45 of the Act (the "Code") provides guidance on good practice to public authorities in carrying out their duties in relation to the Act. The Code includes suggestions in relation to the nature of the advice and assistance that public authorities should provide in relation to section 16 of the Act. Paragraph 14 of the Code recommends that:

" 14. 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."

¹ *Alasdair Roberts v The Information Commissioner* [EA/2008/0050]

25. On 16 June 2011 the CQC wrote to the complainant and suggested that it may be able to provide details of minimum qualification requirements of various jobs within the CQC. On 23 June 2011 the CQC again offered to provide the complainant with "*generic job descriptions and person specifications*".
26. Following on from the internal review the CQC wrote to the complainant on 27 July 2011 and stated:

"In line with providing advice and assistance to an applicant under Freedom of Information (section 16), Human Resources have suggested that we can provide a list of roles that do require a specific qualification to do the job and this would not exceed the allowable limits. Can you confirm that you would be happy for the CQC to provide this to you instead of the qualifications of all staff?"
27. On 28 July 2011, the complainant responded:

"I am happy to accept job adverts as a reliable proxy for the real data on qualifications.

However, in order to be fair to both yourselves and myself, I must insist on your providing a comprehensive list of all roles advertised during a specific time period, say one year. Otherwise the set of data is not a reliable proxy but a random sequence."
28. On 10 August 2011, the CQC provided a spreadsheet showing all posts advertised in the preceding year (i.e. since September 2010) and the minimum professional and/or academic qualifications required by those roles. In doing so, it was CQC's belief that it had reached a mutually satisfactory arrangement after carrying out its duties to provide advice and assistance under section 16.
29. On 06 September 2011 the CQC were copied into the complainant's email to the Commissioner in which he complained about the response to his request of 27 May 2011. The CQC said that this was the first indication that the complainant was unhappy with the information provided following the internal review response. On 10 November 2011, the Commissioner informed the CQC that he would investigate the complaint.
30. On 11 November 2011 the CQC wrote to the complainant again to offer further advice and assistance. The CQC suggested that it could, within the cost limits of the FOIA, provide anonymised details of the qualifications of 65 inspectors that had been recently recruited. The CQC also offered, as an alternative, to provide details of the qualifications of a sample of up to 350 staff.

31. The figure of 350 staff qualification disclosures would clearly exceed the cost limit based upon the CQC's original estimate. The CQC explained to the Commissioner that this estimate was based upon the time that it would take to locate the information relating to the recently appointed inspectors, and not the advice it had received internally that records for longer standing staff would take significantly more time to search. Nevertheless, the CQC informed the Commissioner that it would have honoured its offer of assistance even if the qualifications of longer standing staff had been requested. No response was received from the complainant.
32. The Commissioner finds that the CQC on this occasion provided a significant amount of advice and assistance to the complainant and complied with its duties at section 16. In particular, the Commissioner considers that the CQC response on 10 August 2011 provided the complainant with an opportunity to receive information that both parties agreed would act as a "*reliable proxy*" for the information originally requested.
33. Therefore, the Commissioner has concluded that the CQC complied with its duties under section 16 of the FOIA.

Right of appeal

34. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Pamela Clements
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