

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2012

Public Authority: Belfast Health & Social Care Trust

Address: 1st Floor, Nore Villa
Knockbracken Healthcare Park
Saintfield Road, Belfast
BT8 8BH

Decision (including any steps ordered)

The complainant has requested information from the Belfast Health & Social Care Trust ("the Trust") regarding the number of Trust employees in the past five years who have declared that they are engaged in secondary employment. The Commissioner's decision is that the Trust has correctly applied section 12(1) of FOIA as a basis for non-disclosure of the requested information. The Commissioner requires no steps to be taken.

Request and response

1. On 24 November 2011 the complainant wrote to the Trust and requested information in the following terms:

"I would like to request the following information: -

1. The number of Belfast HSC Trust employees who have declared to the Trust within the last five years that they undertake or intend to undertake secondary employment.
 2. The number of Trust employees who have been de-barred by the Trust from undertaking secondary employment, within the last 5 years.
2. The Trust responded on 21 December 2011. It stated that it did not hold centralised records of employees regarding secondary employment. By way of advice and assistance it provided the complainant with some

information regarding its Working Time Guidance and its relevance to employees wishing to undertake secondary employment.

3. The complainant requested an internal review of the Trust's decision on 6 January 2012. The result of that internal review was sent to the complainant on 13 February 2012. The reviewer concurred that the requested information was not held centrally and stated that the Trust was withholding the requested information under section 12(1) of FOIA (where the cost of complying with the request would exceed the appropriate fees limit).

Scope of the case

4. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
5. The Commissioner has considered whether the University applied section 12(1) of FOIA appropriately to the complainant's request for information.

Reasons for decision

6. The basis for non-disclosure in this case is section 12(1) of FOIA which states 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.'

7. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") provide that the cost limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
8. If a public authority estimates that complying with the requests would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
9. The Commissioner will now consider whether the Trust was entitled to apply section 12(1) to the request.

10. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These factors are:
 - (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.
11. The Commissioner asked the Trust to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.
12. The Trust has informed the Commissioner that, in considering the complainant's request, it endeavoured to obtain the information from individual Trust Directorates. At the time of the request the Trust had 11 Directorates and some 20,000 staff. The Trust's search revealed that records are also not centrally held in each Directorate. In order for the Trust to locate the information requested it would have been necessary to have undertaken the following measures:
 - Issue a request to every manager with staff management responsibility in relation to the information required across the Trust. An example of the level of work this would entail is the Trust's Acute Services Directorate which has 34 main service areas ranging from Emergency Departments to General Surgery, Imaging to Ophthalmology, covering 4,634 staff and various managerial structures. This would have required them to have either spoken individually to each member of staff or to have corresponded with them by letter/email. The Trust employs approximately 20,000 staff, of which only 9,415 have direct access to PCs/laptops and, due to the nature of their work, not all staff have registered for a logon account.
 - In relation to the staff without direct PC access, this would have required the Trust to write to approximately 10,500 staff at an approximate cost of £3,780 based on second class post of 36p.

13. The Trust informed the Commissioner that some managers may have in excess of 100 staff and the time required to contact each of these staff, collate and analyse the responses, would be a considerable cost. By way of example, where the manager and the member of staff are currently available in work this could take 10 minutes per member of staff and based on the £20.00 hourly rate formula equates to £4.16 for each staff member. For 20,000 staff this could amount to £83,000. This would exclude follow up with those individuals not available due to sick leave, annual leave, maternity leave, career break or their working pattern.
14. The Trust also informed the Commissioner that many staff work night duty, irregular shifts and cannot always be reached by the internal mail facility. Staff are based across 370 locations across Belfast and Muckamore Abbey Hospital.
15. Section 12 makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
16. The Commissioner's view is that, for an estimate to be reasonable, it must be "sensible, realistic and supported by cogent evidence" – as per the Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*.¹
17. The Commissioner accepts that the Trust has considered the complainant's request carefully and has scoped the extent of the lengths it would have to go to in order to locate the requested information. The costs of this alone would be far in excess of the £450 costs limit, before even taking into account the costs of retrieving that information and extracting relevant figures from it.
18. The Commissioner accepts that the Trust would have to contact each staff member across all its locations and that logistically this would be a very difficult and challenging exercise to undertake.
19. The Commissioner accepts that the Trust has provided a reasonable estimate and in consideration of the amount of staff time it would take even to locate the information, is satisfied that to even search for the

¹ EA/2006/0004

requested information and determine whether it is held would in itself exceed the appropriate limit of £450.

Advice and assistance

20. If the public authority estimates the cost of determining whether the information is held as being above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance.
21. The Commissioner accepts that there is really no way for the complainant to refine his request. Even if he refined his request to encompass only the past year or two years, for example, the Trust would still need to spend the same amount of time and money contacting staff in order to locate the information and this would still far exceed the appropriate costs limit of £450. The Commissioner notes that the Trust attempted to assist the complainant as far as possible by providing him with the Working Time Guidance.
22. The Commissioner finds that the Trust was entitled to rely on section 12(1), as to search for the requested information would, in itself, clearly exceed the appropriate limit.

Right of appeal

23. 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

24. 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.
25. 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

Rachael Cragg
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SK9 5AF