

Freedom of Information Act 2000 (FOIA)

Decision notice FS50474249

Date: 12 March 2013

Public Authority: The Department of Health
Address: Skipton House
80 London Road
Elephant and Castle
London
SE1 6LW

Decision (including any steps ordered)

1. The complainant has requested information held by the Department of Health ('the DoH') relating to an Independent Inquiry conducted by University Hospitals Bristol NHS Foundation Trust ('the trust'). The DoH applied section 12 of the FOIA and said that it would exceed the appropriate cost limit to comply with the request.
2. The Commissioner's decision is that the DoH has correctly applied section 12 of the FOIA in this case.
3. The Commissioner requires no further steps to be taken.

Request and response

4. On 21 September 2012, the complainant wrote to the DoH and requested information in the following terms:

"I possess an email acquired under the Freedom of Information Act.

It is dated 3rd December 2010 and is from the Chief Executive of University Hospitals Bristol NHS Foundation Trust to Monitor. It includes this sentence:

"(FT status notwithstanding) I do not have clearance from DH yet to publish on Wednesday 8/12 but the informal feedback is to keep going for that date".

Please provide me with all information held by DH (Department of Health) relating to the Inquiry, including informal and formal discussions concerning the report, its contents and the release of the report.

This includes emails, letters, minutes and notes of telephone calls and meetings, and all notes made by DH employees. It includes typed and handwritten records."

5. The DoH responded on 19 October 2012. It stated that responding to the request would exceed the appropriate cost limit.
6. Following an internal review the DoH wrote to the complainant on 16 November 2012. It stated that section 12 applied, as responding to the request would exceed the appropriate cost limit.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2012 to complain about the way her request for information had been handled.
8. The Commissioner has considered whether or not the DoH was correct when it said that responding to the request would exceed the appropriate cost limit.

Reasons for decision

9. Section 12 of FOIA 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."

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £600 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 24 hours work in accordance with the appropriate limit set out above. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
11. The DoH argued that to respond fully to the request would exceed the appropriate cost limit set out in the Regulations. The DoH explained to the Commissioner that it had conducted searches for information falling within the scope of the request. From these searches the DoH created a projected estimate of how much time it would take to respond to the request in full.
 12. The DoH said that it first ascertained which business areas held information falling within the scope of the request, before searching these offices and then calculating an estimate for each area. The DoH said that it found relevant information within four of its business areas. The DoH relayed its estimate for each business area to the Commissioner as follows.

The NHS Business Unit and (name redacted)'s Office

13. The DoH explained that it had it spent a total of four hours of staff time finding, locating and retrieving information falling within the scope of the request within these two business areas. The DoH further explained that there were several databases and filing systems, both electronic and manual, that needed to be searched to ensure all relevant information was found.
14. The DoH said that these searches had produced 142 documents and e-mails that fall within the scope of the request. The DoH said that the majority of these are e-mails that contain document attachments, and that these attachments would need to be read through to ascertain whether or not each one falls within the scope of the request.
15. The DoH confirmed that it carried out a sampling exercise on a random sample of 34 of the emails, 14 of which had documents attached. The DoH said that it took a member of staff one hour to read through these to establish which was and was not relevant to the request. On that basis the DoH estimated that it would take a further four hours to establish which information falls within the scope of the request from the remaining 128 e-mails and documents.

The Press Office

16. The DoH said that two hours of staff time was spent checking through e-mails on the press office database, which produced six items falling within the scope of the request.

The Professional Standards Division

17. The DoH said that it had taken one hour of staff time to find, locate and retrieve the relevant documents that it found within the professional standards division. From this search the DoH said that it found seven items falling within the scope of the request.
18. The DoH added that the searches it conducted using relevant keywords had produced 188 items which might have fallen within the scope of the request, however after searching these more closely it was established that only seven were in scope.

The DoH's correspondence database, 'Contact'.

19. The DoH explained that in addition to searching these specific business areas, it had had to search its correspondence database to be sure that it would catch all information that it holds that falls within the scope of the request.
20. The DoH explained that it conducted three searches of its database using three different search terms. It said that these searches produced 167 relevant records and took a member of staff two hours in total. The DoH explained that each one of these records consists of an item of correspondence from a member of the public and a response from the DoH, totalling 334 individual letters. The DoH said that in order to establish whether any of these records contain information that falls within scope of the request, it would need to retrieve each one, read through it, and locate and extract any relevant information.
21. The DoH confirmed that it had conducted a sampling exercise on a small number of these records, which established that a reasonable average time to do this was two minutes per letter. The DoH therefore calculated that it would take an approximate further 11 hours to check through all 334 letters.

The DoH's total estimate

22. The DoH said that, taking one day to constitute seven hours of work, a total of 40 hours of staff time had already been taken up in responding to this request. It also argued that, based on the projections calculated from the work that it had already done and from the sampling exercises

that it had conducted, a further expenditure of 15 hours of staff time would be required to respond to the request fully.

23. The DoH said that this would bring the total of staff time to 55 hours. The Commissioner considers that this estimate is reasonable, realistic, and based in cogent evidence.
24. The DoH also confirmed that the estimate was based on the quickest method of gathering the requested information. The DoH explained that to ensure all relevant information was caught it carried out thorough and comprehensive searches, but had done so in the most efficient way possible.
25. The DoH confirmed to the Commissioner that it had provided the complainant with advice and assistance.
26. The complainant argued that the DoH did not offer any advice on how to narrow the request.
27. The Commissioner notes that in its initial response to the request dated 19 October 2012 the DoH advised the complainant that narrowing her request could enable the DoH to respond to the request within the cost limit. In this letter the DoH told the complainant that refining her request for information within more specific margins for example, within a specific timeframe or policy team, then the DoH may be able to continue processing the request. The DoH further advised that the complainant may wish to consider refining her request to one of the four teams it had identified as holding information falling within the scope of the request.
28. The DoH explained to the Commissioner that it had advised the complainant that she could narrow the request to one of the specific departments, as above. The DoH said that it had suggested that the complainant narrow her request by one of these teams, because it had already established that relevant information was held by each of these teams. The DoH said that the complainant did not do so and instead submitted an internal review.
29. Therefore, the Commissioner has concluded that the DoH complied with its duties under section 16 of the FOIA.
30. The complainant also argued that the DoH wrongfully took into account the time taken to redact the information. Having reviewed the DoH's estimate, the Commissioner is satisfied that the DoH has not done this, and has only taken into account the staff time spent conducting the four allowed activities.

31. The Commissioner is satisfied that the DoH has provided a sensible and realistic estimate that is based on cogent evidence. It is therefore the Commissioner's decision that section 12 of the FOIA has correctly been applied in this case.

Other matters

32. The Commissioner notes that the complainant has submitted arguments about the public interest in disclosing the information requested. The Commissioner further notes that the complainant has argued that section 12 is a qualified exemption and as such is subject to the public interest test.
33. The Commissioner clarified this, and explained to the complainant that section 12 is not subject to the public interest test because it is a procedural section of the FOIA. The Commissioner explained to the complainant that he therefore cannot take arguments about the public interest in disclosing the information into account when assessing this case.

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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Information Commissioner's Office
Wycliffe House
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