

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2014

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

Decision (including any steps ordered)

1. The complainant has requested information about a Board to Board meeting between University Hospitals of Morecambe Bay NHS Trust (UHMB) and North Lancashire Teaching Primary Care Trust (NLTPCT). The Care Quality Commission (CQC) stated it would exceed the cost limit to determine if information was held and therefore applied section 12 of the FOIA to refuse the request. The Commissioner's decision is that the CQC correctly refused the request under section 12 and he therefore requires no steps to be taken.

Request and response

2. On 17 March 2014, the complainant wrote to the CQC and requested information in the following terms:

"In May-June 2010 the herein designated 'Halsall Letters' were written. These consisted of letters between Tony Halsall [TH], then University Hospitals of Morecambe Bay NHS Trust [UHMB] Chief Executive and Janet Soo-Chung [JSC], then North Lancs. Teaching Primary Care Trust [NLTPCT] Chief Executive along with a report prepared for NLTPCT Board:

- a. *Letter from JSC to TH dated 5.5.10.*
- b. *Report related to (i) prepared for NLTPCT Board meeting of 26.5.10.*

- c. *Letter from JSC to TH dated 27.5.10.*
- d. *Letter from TH to JSC dated 28.5.10.*
- e. *Letter from JSC to TH dated 3.6.10.*
- f. *Letter from TH to JSC dated 14.6.10*

Several times within these documents reference is made to the 'forthcoming Board to Board meeting' between UHMB and NLTPCT.

This FoI request is for the full text of documents, emails and calendar/diary entries referring to this 'Board to Board' meeting. The request does not include the documents listed in (i) to (vi) above. The meaning of 'full text' is obvious where documents, reports, letters etc. are concerned. In the case of emails, I define 'full text' to mean the entire email thread as recorded, extending as far back as possible within the records available to CQC. In the case of calendar/diary entries, I define 'full text' to mean the entire entry which refers to the meeting along with the appropriate calendar/diary entry for any person recorded as being related to the meeting, if those other entries are recorded information available to CQC."

3. The CQC responded on 4 April 2014 and explained that in order to determine if information was held it would exceed the appropriate cost limit under section 12(1) of the FOIA.
4. Following an internal review the CQC wrote to the complainant on 10 May 2014. It stated that it upheld the decision to refuse the request on the basis of section 12(1) but considered it should have undertaken some limited searches to identify if easily accessible information could be identified.
5. The CQC explained that it contacted a range of staff to establish if they were aware of any relevant information, this included senior members of staff within the CQC who were involved in issues relating to the investigation during the time period referred to in the request. This did not result in any relevant information being identified. The CQC therefore stated that it had been unable to find anything that suggested it was aware of the Board to Board meeting referred to in the request but acknowledged that it may have been informed about planning for this meeting but it may be within its electronic or paper records or back-up systems.
6. The CQC also undertook the following searches:
 - central records on its systems searched to look for correspondence from UHMB or NLTPCT during June to September 2010;

- a search of saved emails sent or received by the CQCs Chief Executive in June and July 2010 using keywords "UHMB" and "Morecambe" with all returns then reviewed for relevance; and
 - search of electronic records prepared for the inquiry including documents passed to Grant Thornton for their review and emails of key staff at the time using keywords "board", "PCT", "cumbria" and "Lancashire".
7. The CQC explained that these searches did not return any documents containing any reference to a planned, proposed or actual board meeting between UHMB and NLTPCT at the time in question. The CQC stated it did hold a large number of paper records relating to UHMB and some electronic records could not be searched using keywords. The CQC considered to search these records and back-up systems to definitively conclude whether information is held would go on to exceed the cost limit.

Scope of the case

8. The complainant initially contacted the Commissioner on 9 May 2014 and then again on 6 June 2014 following the internal review, to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to determine if the CQC has correctly refused the request under section 12(1) of the FOIA as it would exceed the cost limit to confirm if information relevant to the request is held.

Background

10. The CQC as the regulator for health and adult social care services in England was tasked with implementing a system to regulate health and social care services and considering applications from NHS Trusts. Each regulated activity required a separate registration. The CQC could approve these registrations, refuse them (consequently making a service operated by a Trust unlawful), or register the Trust with conditions requiring them to become compliant within a set period of time.
11. CQC registered UHMB without conditions in April 2010 and followed this up with an inspection in June 2010 providing feedback to Monitor who then granted UHMB Foundation Trust status. The CQC therefore

collected information and communications about UHMB extensively during this period.

12. Following concerns about UHMB, the CQC commissioned Grant Thornton LLP to conduct a review of its regulation of UHMB. The subsequent report highlighted failures in the CQC's internal governance regarding UHMBs registration. The Secretary of State for Health later announced an independent investigation into maternity and neonatal services (known as the Kirkup Investigation) which is currently ongoing. The CQC has provided information to the Kirkup Investigation team.

Reasons for decision

Section 12

13. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450.
14. A public authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in undertaking the following activities:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
15. The costs are calculated at £25 per person per hour and in this case the cost limit will be exceeded if the above activities exceed 18 hours.
16. A public authority does not need to make a precise calculation of the costs of complying with a request; only an estimate is required. However, it must be a reasonable estimate and what is reasonable will be determined on a case by case basis. The Commissioner is guided by the Information Tribunal¹ on this and considers that a reasonable estimate should be sensible, realistic and supported by cogent evidence.

¹ EA/2006/0004

17. The Commissioner is also mindful of his own guidance on this subject² which states that a sensible and realistic estimate is one which is based on the specific circumstances of the case.
18. In this case, the request was for the full text of documents referring to a 'Board to Board' meeting between UHMB and NLTPCT which was supposed to take place in 2010. This meeting was referenced in letters which have been described by the complainant as the 'Halsall letters' and were released as a result of previous FOI requests to public authorities and a decision by the Information Tribunal. These letters refer to "*a formal Board to Board meeting would be a useful step forward*" and "*a robust debate at our future Board to Board meeting.*" This meeting would have been between the Boards of UHMB and NLTPCT.
19. The CQC considers this meeting, if it were to have taken place, would have taken place sometime in mid to late 2010 which, as detailed in the 'Background' section of this notice, is a period in which the CQC is likely to have accumulated extensive information regarding UHMB.
20. As such, the CQC conducted some preliminary searches to establish if any information relevant to the request was held. This involved enquiring with employees involved in this issue, performing keyword searches of accessible electronic records and requiring searches of emails to take place.
21. After doing this, the CQC concluded that it seemed unlikely it held information within the scope of the request but it could not categorically state this without further interrogation of its electronic and paper records. It is these additional searches that the CQC consider would exceed the cost limit of £450 to achieve. The CQC has also provided details of the time taken to conduct the searches already undertaken which the Commissioner accepts can be included in the cost estimate, although the CQC itself has not included this in the cost estimate.
22. The main search already undertaken of over 3500 files relevant to the Kirkup investigation by a member of the Legal Services Team involved

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[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx)

keyword searching emails and attachments and reviewing any returned documents. The manual review of the emails returned took approximately one hour to complete.

23. A search of archived emails sent or received by the CQC's former Chief Executive in June and July 2010 using keyword searches was also conducted. Any emails returned were then manually searched for relevant information and this again took approximately one hour to complete. A similar keyword search of the CQC's Chair's emails was also completed and then a search and review again took about one hour to complete.
24. The records for UHMB from June to September 2010 held on the CQC's central records system were also reviewed. These documents could not be keyword searched so had to be located, opened and reviewed individually taking approximately two hours to complete.
25. Finally, CQC staff were asked if they were aware of the Board to Board meeting or any records relating to it. The CQC estimated the time taken to prepare and send the email and for all staff to read, consider and respond to it totalled one hour.
26. In total the CQC estimates it spent six hours on searches but did not include this in the cost estimate. However, the Commissioner considers this time can be included in the cost estimate and accepts that the estimated time and explanations provided by the CQC for these activities seems reasonable.
27. The CQC has stated it would need to conduct further searches if it were to conclusively state whether information was held and it is these further searches which would exceed the cost estimate.
28. One of these further searches would involve a wider search of the records held on the CQC's central records system. The CQC would expand the search to April 2010 as the first of the Halsall letters was dated May 2010 but the Board to Board meeting may have been proposed before this date. The CQC would also need to expand the search beyond the end of 2010 in case the meeting did not take place until later or in the event that information about the meeting was received some time after it took place (if it did in fact happen).
29. The CQC has explained that its central records system holds about 1100 records relating to UHMB, many including attachments, although some of these will fall outside the time period needed to be searched for this request. Based on the previous search for records which encompassed a three month period, the CQC has estimated this expanded search

covering a further 17 month period (from April 2010 to the end of 2011) would take approximately seven hours.

30. As well as this, the CQC has stated it would also need to conduct a wider search of the Chair and Chief Executive's emails for the same period and, based on previous searches, this would take approximately five hours.
31. The CQC also holds paper records relating to UHMB which would need to be reviewed. The CQC has stated there are about 40 bundles of documents, each equivalent to a lever-arch files worth of content. This information is held in a storage cupboard in the CQC's head office and it is estimated it would take one person about two hours to scan one lever-arch file for information of relevance to the request. The reason for this estimate has been explained as the material is in some cases handwritten, some is contained in notebooks and some is contained within plastic wallets or bindings. In total the CQC therefore estimates searching these 40 bundles would take approximately 80 hours.
32. The CQC has also considered restoring and searching email backups for employees (present and former) who may have received information regarding the Board to Board meeting during this period. The retention period would normally be 12 months for back-up tapes but the deletion of older tapes was paused following the announcement of the Kirkup investigation so back-up tapes are available and could be searched.
33. In order to search these back-up tapes for relevant information contained in emails for this time period, the CQC has estimated 30 minutes for each person whose archived emails are searched. The number of employees has not been confirmed by the CQC but would at the very least include the Director of Operations, Regional Director, relevant Compliance Managers and Inspectors with responsibility for UHMB at the time.
34. Overall, the CQC considers the time required to conduct these additional searches to conclusively state whether information is held would far exceed the cost limit.
35. The Commissioner has considered the further estimates provided by the CQC and he considers that the estimated times to conduct activities to identify relevant information seem reasonable. He does acknowledge that the time period the CQC would want to search between does seem quite extensive and it may be that searching within a shorter period, for example to the middle of 2011 rather than the end, would be sufficient to identify relevant information. Nevertheless, even if the time period was reduced the time required would still exceed the cost limit.

36. The Commissioner has also factored in the time already taken to conduct basic searches which the CQC did not include in this estimate. The Commissioner accepts the time already taken is a relevant consideration and this combined with the estimated time required for further searches is enough for him to conclude that the cost limit would be exceeded in confirming if information is held. He therefore accepts the CQC has correctly refused the request under section 12(1) of the FOIA.

Right of appeal

37. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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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