

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2015

Public Authority: The Department of Health (DoH)
Address: 79 Whitehall
London
SW1A

Decision (including any steps ordered)

1. The complainant has requested information from the DoH in its capacity as the holder of the legacy records of former Primary Care Trusts (PCT) and PCT Clusters. The DoH said that it would exceed the cost limit under section 12 FOIA to comply with the request.
2. The Commissioner's decision is that the DoH has correctly applied section 12 FOIA in this case.
3. The Commissioner requires no steps to be taken

Request and response

4. On 22 August 2014 the complainant requested information of the following description:

"I am sending this FoI request to DoH in its capacity as the holder of the legacy records of former Primary Care Trusts and PCT Clusters.

I request the following:

1. Copies (electronic copies only, no paper documents requested) of any recorded, written, printed, paper or electronic communication, including any associated files, between any or all of (individually or combined) former North Lancashire Primary Care Trust Chairman William Bingley, former NLTPCT Chief Executive Janet Soo-Chung, former NLTPCT Medical Director Jim Gardner and former NLTPCT Finance Director Kevin Parkinson and Monitor and the Care Quality Commission

dated during the months of June, July and August 2010, but excluding purely financial documents and any individual document/ file which is itself over 50 pages long. In other words, for each of the 4 NLTPCT directors I am requesting their individual and combined communications with Monitor and/ or CQC (and any replies within the records) which convey specific information, requests, ideas etc. which may or may not be related to University Hospitals of Morecambe Bay registration/ authorisation and which may or may not refer to UHMB failings, serious incidents or patients, but I am not requesting the text of published reports such as the PCT or UHMB Annual Report and Accounts, or the Fielding Report, for instance. I am not requesting the internal PCT report into UHMB compiled for the NLTPCT Board meeting of May 2010 which I already have, but I am requesting any other internal PCT reports if they were included or specifically referred to in communications between any of the specified directors and Monitor/ CQC dated in the specified 3 months. Typically, the requested communications would be letters and emails of 1-10 pages long.

2. Information about whether and when each communication, document or file was provided to the formal DoH Morecambe Bay Investigation run by Dr Bill Kirkup."
5. On 22 September 2014 the DoH responded. It said that finding, collating and analysing the information requested would exceed the time and cost limits as set out in section 12(1) of the FOIA. It said it was not therefore obliged to comply with the request. It provided the complainant with advice and assistance as to how he might wish to refine his request.
6. The complainant requested an internal review on 10 October 2014. The DoH sent the outcome of its internal review on 7 November 2014. It upheld its original position. It did however suggest that from the searches it had carried out in relation to this request, it is unlikely that any information is held.

Scope of the case

7. The complainant contacted the Commissioner on 10 November 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether section 12 FOIA was applied correctly in this case.

Reasons for decision

Section 12

9. Section 12 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 £450 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 18 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 explained that the information held is the information/papers it has inherited from Primary Care Trusts (PCTs) following the re-organisation set out in the Health & Social Care Bill in 2012. The total volume of records, both electronic and digitised amounts to 1.3 million files and a total of 588Gb of data. It said the mixture of files is such that general office documents (which have been created using MS Office applications) are searchable, and would respond to keyword searches. The remaining items are digitised paper records which have been created as images. There are 22,451 files presenting digitised content. As a text layer is not available in those files, they cannot be searched for the content within them, and it requires each file to be opened and viewed to determine whether it is within the scope of the request. The request is framed as multiple search terms, dates and types of document which makes the assessment by DH's officials of each document quite resource intensive.

12. The DoH explained that it had conducted a sampling exercise:

It said a sample search was undertaken using a time limitation of fifteen minutes to determine how much work could be completed. This is the quickest method of gathering the requested information. The results were

NL -QS&E QSE-COM

Number of files in folder = 1,709

Number of files analysed in sample period = 14

NL - Trust Board-Corp. Management

Number of files in folder = 1,156

Number of files analysed in sample period = 11

It said this process involved opening each document and assessing whether it fell within the parameters of the search terms. It said individual documents could take anything between 30 seconds and five minutes to open depending upon the document size and length. It said the source document complexity (such as the present of images, and the dpi the document was scanned at) determines the size of the resulting file. It said that there appears to be no correlation between the document size in terms of megabytes and the length of the document.

13. The DoH indicated that if the complainant refined his request to paper records, rather than digitised paper records this may fall within the cost limit. The Commissioner asked the DoH whether the paper records would contain all of the information requested (as presumably the digitised paper records were taken directly from the paper records). He therefore queried whether it would be absolutely necessary to search digitised paper records as well.
14. The DoH explained that digitisation of the records was undertaken by a third party contractor at the request of the Primary Care Trust. The DoH believes that the paper records have been fully digitised, but it does not have sight of the original instructions on what items should have been digitised and how the work was to be completed. It said that the paper records are the primary source of the material, and the digitised copies represent a surrogate record. It said that it is possible that the digitisation of the records was incomplete, meaning that more information remains within the paper records than the digitised copies and similarly some of the paper records could have been destroyed following the digitisation project.
15. Upon considering the arguments put forward by the DoH the Commissioner considers that due to the significant number of records that would need to be searched, both manually and digitised, and

based upon the sampling exercise undertaken, it would significantly exceed the cost limit under section 12 to comply with this request. The Commissioner therefore considers that section 12 was correctly applied to the first part of this request.

Section 16

16. The DoH explained that it advised the complainant that he could narrow his request based upon the collections of digitised records. It said that it offered the option to narrow the request to paper records for completeness, rather than offering the advice that the search of paper records would be more fruitful. The advice the DoH had offered to the complainant was to narrow the request, which was the same for both electronic and digitised collections. It said that the complainant was given the example of narrowing his request to a search of one of the ten separate archives and it confirmed that details of the ten digitised paper record archives were provided to the applicant.
17. The Commissioner considers that the DoH did provide the complainant with advice and assistance as to how the request could be refined under section 16 FOIA. The DoH has advised the Commissioner that the complainant has not submitted a refined request.

Right of appeal

18. 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

19. 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.
20. 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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