

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2015

Public Authority: Pennine Care NHS Foundation Trust
Address: Trust Headquarters
225 Old Street
Ashton-Under-Lyne
Lancashire
OL6 7SR

Decision (including any steps ordered)

1. The complainant has requested information on the provision and fitting of hearing aids at Pennine Care NHS Foundation Trust. The Trust initially refused some of the information on the basis of section 43(2) and section 12(1) of the FOIA. The Trust later considered the requests could be aggregated and all refused under section 12 as the cost limit would be exceeded in responding.
2. The Commissioner's decision is that Pennine Care NHS Foundation Trust has correctly refused the requests under section 12(1) of the FOIA.

Request and response

3. On 3 February 2015, the complainant wrote to Pennine Care NHS Foundation Trust ("the Trust") and requested information in the following terms:

"Please can you answer the following questions, which relate to Audit Audiology:

- 1) *How many adults are fitted with hearing aids each year?*
- 2) *How many of these adults fitted are new patients?*
- 3) *How many are existing adult patients where hearing aids are being replaced?*

- 4) *What % of adult patients are being fitted with two hearing aids?*
 - 5) *How many new patients presenting bilateral age-related hearing loss are fitted with only one hearing aid?*
 - 6) *Are there any restrictions on the level of hearing loss fitted (e.g. the average threshold should be below 55dB on an audiogram)?*
 - 7) *How many times on average do you see each patient for an aftercare appointment each year?*
 - 8) *How do you assess the outcome of each hearing aid fitting? At what point?*
 - 9) *What % of appointments are not kept by patients?*
 - 10) *How many days per week do patients have access to an aftercare appointment within audiology locations?*
 - 11) *What is the split or % share between those patients referred from their GP and those referred from ENT?*
 - 12) *In how many different clinic locations do you run a hearing service?*
 - 13) *Do you offer a community/home service?"*
4. The Trust responded on 27 February 2015. In response to question 1 (Q1), 2, 3, 4 and 11 it stated the information was being withheld on the basis of section 43 of the FOIA. For Q5 the Trust explained it could not provide the information within the appropriate cost limits as set out by section 12 of the FOIA. For the remaining questions the Trust provided the requested information.
 5. Following an internal review the Trust wrote to the complainant on 31 March 2015. It stated that it upheld its decision not to provide information in response to Q1, 2, 3, 4, 5 and 11.

Scope of the case

6. The complainant contacted the Commissioner on 1 April 2015 to complain about the way his request for information had been handled. In particular the complainant argued that the information he had requested could not be commercially sensitive and that as other Trust's had provided the same information he disputed that the Trust in this case could not provide the requested information.

7. During the course of the Commissioner's investigation, the Trust contacted the Commissioner to explain it was no longer seeking to rely on section 43(2) of the FOIA to withhold any of the information and instead considered section 12 to be applicable as a basis for refusing the remaining six questions. The Trust provided this updated position to the complainant.
8. The Commissioner therefore considers the scope of his investigation to be to determine if the section 12 exemption can be relied upon to refuse the outstanding parts of the request.

Reasons for decision

9. 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.
10. 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.
11. 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.
12. 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

13. 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.
14. In the case the parts of the request which have been refused on the basis of exceeding the appropriate limit are:
 - Q1) How many adults are fitted with hearing aids each year?
 - Q2) How many of these adults fitted are new patients?
 - Q3) How many are existing adult patients where hearing aids are being replaced?
 - Q4) What % of adult patients are fitted with two hearing aids?
 - Q5) How many new patients presenting bilateral age-related hearing loss are fitted with only one hearing aid?
 - Q11) What is the split or % share between those patients referred from their GP and those referred from ENT?
15. The Trust explained that it had initially applied section 12 to just Q5 as responding to this part of the request on its own had been estimated as taking over 18 hours. However, having looked at the request again it now considered the appropriate cost limit would be exceeded by responding to all the remaining parts of the request.
16. In the Commissioner's guidance on section 12 he makes it clear that multiple requests within a single item of correspondence are separate requests for the purpose of section 12 following a decision of the Information Tribunal³. These requests can therefore be aggregated provided they meet the requirements of regulation 5 of the Fees Regulations.
17. The Fees Regulations require that the requests are made by one person, made for the same or similar information and received within 60 working days of each other. In this case as each request is in the same correspondence and is for related information the Commissioner is

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

³ EA/2007/0124

satisfied the Trust is able to aggregate these requests for the purpose of section 12.

18. The Commissioner asked the Trust to provide a detailed cost estimate to demonstrate it had correctly calculated the costs involved in responding to these requests. The Trust provided further information and confirmed it had conducted a sampling exercise and conducted a further sampling exercise when it determined it was relying on section 12 to aggregate the requests.
19. The Trust has explained that for one question (Q5) it would take over 18 hours alone to provide the requested information. As an explanation for this the Trust has stated it does not collect data specifically on how many people have bilateral age-related loss so it would need to look at the journal entry for each client and there are over 6000 clients. The Commissioner asked for further detail as to the cost estimate for this exercise and for responding to the other requests which had been aggregated.
20. The Trust firstly clarified it would need to send an Audiologist to each of the Boroughs within the Trust to access the records for the requested information and for each of the six outstanding questions the Trust states it would need to check with three geographical Boroughs. The Trust has not factored in the travelling time when producing its cost estimate.
21. For Q1 the Trust has estimated it would take approximately 30 minutes per Borough, with a total time of 1.5 hours to locate, collate and provide this information. This is based on the requirement for the Audiologist to access old reference cost reports which are held as paper records for each Borough and collating the relevant information.
22. For Q2 the Trust would need to run an electronic report at each Borough and then interrogate this report to find the split between new and existing patients. Based on the sampling exercise conducted by the Trust it has been estimated this would take approximately 60 minutes per Borough, with a total time of three hours to provide this information.
23. The Trust has explained the same process would have to be followed to locate and provide information in response to Q3 as with Q2 so has estimated this as a further three hours of staff time.
24. Q4 asked for the percentage of patients fitted with two hearing aids and the Trust has explained that it may be possible to do an estimate for some of the three Boroughs looking at percentage rates. However, for some cohorts of patients this data would need to be pulled from a particular part of the electronic system that provides this level of data.

However, not all sites use this particular part of the system. The Trust has therefore estimated these activities to take three hours across the three Boroughs but has explained that the only way it could definitively provide the required information would be to look at every record which would take substantially longer than the time it has estimated for.

25. It is Q5 which initially triggered the Trust's reliance on section 12 and this is still the request which the Trust considers would take the longest amount of time to process and would in fact exceed the cost limit to respond to on its own.
26. To explain its estimate for the time required for this request the Trust conducted a sampling exercise using its electronic systems. The Trust has advised that each of the three Boroughs has a slightly different electronic recording system but for the purposes of the sampling exercise it has used the system that is easiest to access and most reliable. It has therefore estimated that it would take between 30 seconds and a minute to access each patient's records and extract the relevant information. There are approximately 6000 records and the Trust has used the average time for each record of 45 seconds when calculating the time required to extract and provide this information. It has concluded the time required would be 45 hours on this basis.
27. Finally, for Q11 the Trust has explained this would require a similar process to that required to extract information for Q2 and Q3 in that an electronic report would need to be run at each of the Boroughs and the reports would need to be looked through to find the split between new and existing patients. The time estimated for this activity is three hours across the three Boroughs and much of this is time that is required for the reports to run. The Trust has further explained that this would only generate the number of referrals but will not show how many of these referrals lead to a hearing aid. To get this level of detail further work would have to be done and this has not been factored into the estimate.
28. Overall the Trust considers the time required to conduct these activities would far exceed the cost limit.
29. The Commissioner has considered the further estimates provided by the Trust and generally he accepts the estimated times to conduct activities to identify and extract relevant information to be reasonable. The Commissioner does however note that the Trust has not explained in detail how its electronic systems work and it may be possible for some of these reports to be run at the same time rather than separately for searching for information in regard to Q1, Q2, Q3, Q4 and Q11. If this was the case this would reduce the time that has been estimated for these activities.

30. However, regardless of this the Commissioner has focused his attention on the time estimated for activities in relation to Q5 as this is the request which the Trust considers would far exceed the cost limit to comply with on its own. This request was for numbers of new patients with bilateral age-related hearing who are only fitted with one hearing aid.
31. The Trust did conduct a sampling exercise for this and the Commissioner notes that the Trust chose to base its estimate on the average amount of time to search and extract information from the records which he considers to be reasonable. The Commissioner accepts the Trust's assurances that it would have to look at each of the 6000 records separately to retrieve the relevant information. He acknowledges that it is reasonable that an electronic system may hold details of patients with bilateral-age related hearing but it may require manual interrogation of these records to ascertain if those patients meeting the criteria had been fitted with only one hearing aid.
32. The time estimated for this request only would far exceed the cost limit without factoring in any time required to respond to the other requests which have been aggregated in this case. The Commissioner notes the complainant's concerns that other Trusts have been able to supply this information but he can only base his decision on the information supplied to him in this case. He considers it is reasonable that different Trust's will have different ways of recording information which will affect the way they would be able to extract relevant information and in this case the Trust has sufficiently explained the activities it would need to conduct to respond to the requests.
33. The Commissioner therefore accepts the time required to conduct relevant activities to provide the requested information would be high enough to exceed the cost limit. He therefore accepts the Trust has correctly refused the request under section 12(1) 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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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