

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2015

Public Authority: Heart of England NHS Foundation Trust
Address: Birmingham Heartlands Hospital
Bordesley Green East
Birmingham
B9 5SS

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Heart of England NHS Foundation Trust ("the Trust") for information about the deaths of patients under the care of a particular named doctor. The Trust refused the request under section 12 on the grounds that it estimated the cost would exceed the appropriate limit.
2. The Commissioner has investigated the complaint and found that section 12(1) was correctly applied and he requires no steps to be taken.

Request and response

3. On 5 May 2015 the complainant made a freedom of information request to the Trust which was as follows:

I would like to see a table showing deaths at Good Hope Hospital from April 2001 - May 2015 for Dr [a named individual] Geriatric Medicine. The table to show:

1. Cause of death
2. Age of Deceased
- 3 Ward or Unit in which death occurred.
4. Date of death
5. Sex of Deceased

4. The Trust responded to the request on 5 June 2015 when it confirmed that the requested information was held. However it also explained that it had estimated that the cost of complying with the request would exceed the appropriate limit of £450 and that therefore the request was refused under section 12 of FOIA.
5. The complainant subsequently asked the Trust to carry out an internal review of its handling of the request and it presented its findings on 6 July 2015. The review upheld the decision to refuse the request under section 12 of FOIA.

Scope of the case

6. On 14 June 2015, prior to the completion of the internal review, the complainant contacted the Commissioner to complain about the Trust's decision to refuse her request.
7. Following the completion of the internal review, the Commissioner agreed with the complainant that the scope of his investigation would be to consider whether the Trust had applied section 12 correctly.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

8. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations"). The appropriate limit for the Trust and public authorities outside of Central Government is £450.
9. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

10. In this case the Trust explained that its medical consultants work as part of a team and to assign a cause of death and related data to the management of a single clinician would require a search of Good Hope Hospital Geriatric patient records for the relevant years requested, April 2001 to May 2015.
11. The Trust has said that its understanding of the request is that it is being asked to provide a list containing information on inpatients where this particular doctor was involved, at some point, in the care of a patient who dies. The Commissioner would agree that this is a reasonable interpretation of the request.
12. It went on to say that it will hold most of the requested information where it had been entered on its electronic systems that this particular doctor had been recorded by its ward staff as the named consultant for a 'finished consultant episode' (FCE). It explained that a FCE is recorded on discharge, death or each formal transfer of care during the patient's hospital stay. However, it said that this list may not be accurate because a particular doctor may not necessarily have been involved with or have seen the patient as the doctors work as teams providing cross cover for leave and weekends. Or vice versa, there may be other patients attributed to other consultants where a doctor has provided some care covering colleagues. This would not be recorded in the electronic database. It acknowledged that accurate assignment of a consultant is an area of on-going improvement work.
13. Therefore, to accurately determine whether the named doctor had been involved at some point in the patient's hospital stay would require each clinical record to be reviewed by a clinician or trained member of staff. The Trust carried out a search of its electronic database, looking at the patients where this doctor had been electronically recorded as involved in their care. This limited search identified 8381 patients whose records would need to be searched.
14. As the Trust has explained, the named doctor will not necessarily have been involved in every one of these patient's care and so it would need to search though each record individually. The Trust produced an analysis of the costs it expected to incur in completing this work following a sampling exercise. As a result it estimated that if the record is readily available it would take as a minimum an average of 10 minutes to request and review each medical record to retrieve the requested information and determine if the doctor saw the patient and if she was appropriately named as the consultant involved with the patients care. This produces a figure of 1395 hours (10 x 8381).

15. However, it is important to remember that the Trust does not hold a list of FCE's on its electronic database for the years 2001/2, 2002/3 and 2007/8. Therefore it would also need to search its archives for these years to retrieve any records where this named doctor was recorded as being involved in a patients care. This would in addition to the 8381 patients which the Trust identified from searching its database. Therefore the estimate of 1395 hours is likely to be very conservative indeed as the Trust would also need to search the records for an additional 3 years which it was unable to identify electronically.
16. Having considered the Trust's arguments the Commissioner is satisfied that the time needed to comply with the complainant's request is considerable and that the costs involved would massively exceed the appropriate limit. It is clear that due to the way in which the Trust's consultants work and the way in which their involvement with patients is recorded it is far from straightforward to produce the information to the level of detail requested by the complainant. In fact it would be extremely burdensome. The Commissioner has found that the Trust's estimate of the time taken to comply with the request is reasonable and only relevant costs have been taken in to account. Moreover, the Trust's estimate has been informed by a detailed sampling exercise to gauge how long it would take to request and review individual records. In light of this the Commissioner must find that the cost of complying with the request would exceed the appropriate limit and consequently section 12(1) has been correctly applied.

Right of appeal

17. 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

18. 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.
19. 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

Paul Warbrick
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