Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **2 March 2020**

Public Authority: **Department of Health and Social Care**
Address: **39 Victoria Street**
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested information on Senior Civil Servants disciplined for wrongdoing. The Department of Health and Social Care (DHSC) refused the request under section 12 of the FOIA as it would exceed the cost limit to comply.

2. The Commissioner's decision is that the DHSC was entitled to refuse the request under section 12 of the FOIA and that it complied with its duty to provide advice and assistance in accordance with section 16(1). The Commissioner does not require the DHSC to take any further steps.

Request and response

3. On 23 May 2019 the complainant made a request to the DHSC in the following terms:

   "Can you let me know how many Senior Civil Servants have been disciplined for committing wrongdoings?"

4. The DHSC responded on 21 June 2019 and stated it had treated this as a request relating to senior civil servants employed by the DHSC. The DHSC refused the request under section 12 of the FOIA and advised the complainant to provide a timeframe in order to refine his request and potentially bring it under the cost limit.

5. The complainant refined his request on 21 June 2019. The refined request was as follows:

   "Can you let me know how many Senior Civil Servants have been disciplined for committing wrongdoings in the last 5 years? If this exceeds £600 under section 12(1), can you provide data that will not exceed £600."

6. The DHSC responded on 22 July 2019 and again refused the request on the basis of section 12, stating no further advice to refine the request could be offered.

7. The complainant requested an internal review of this decision on 5 August 2019. The DHSC conducted an internal review and responded on 20 September 2019 stating that to gather the information requested would involve contacting all sections within the DHSC, all line managers of Senior Civil Servant (SCS) staff, and requires each to instigate searches. The DHSC stated the information is not held centrally for any grade of staff including SCS.

Scope of the case

8. The complainant contacted the Commissioner on 7 November 2019 to complain about the way his request for information had been handled.

9. The Commissioner considers the scope of her investigation to be to determine if the DHSC has correctly refused to respond to the request as to do so would exceed the appropriate cost limit under section 12 of the FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

    - either comply with the request in its entirety, or
    - confirm or deny whether the requested information is held.

11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request;

24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to DHSC.

12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

    - determining whether it holds the information;
    - 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.

13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

14. As is the practice in a case such as this, the Commissioner asked DHSC to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

15. In its submission to the Commissioner the DHSC explained that it had conducted a sampling exercise to determine how long it would take to determine if the information was held and where it was held. It stated it took the HR and Freedom of Information Team 90 minutes to ascertain this and that it determined the requested information was not held centrally for any grade of staff.

16. The DHSC went on to calculate how long it would take to retrieve and extract the requested information. To do this it firstly established how many SCS staff were in post in each of the last five years, and then used the year with the lowest number of SCSs in post for producing its estimate.

17. The DHSC estimated that, using the year with the fewest SCSs, it would take one hour per SCS to retrieve and extract relevant information from the entirety of their recorded information. On this basis, it would take over 100 hours for just this one year and at a cost of £25 per hour of staff time this would far exceed the cost limit.

18. The DHSC considered this would be the quickest way of gathering the requested information – as the information is not stored centrally the

quickest method of ascertaining if information is held and retrieving it would be to ask each line manager individually and ask them to check all electronic and written information for interactions that could be considered 'discipline' relating to 'wrongdoings'.

19. In response to the Commissioner's questions on information gathering methods the DHSC further explained that it could not account for line managers of SCS staff that may have left the DHSC or the Civil Service in the last five years. HR casework can only provide data that has been logged or recorded and the DHSC has no other way of determining whether any discipline took place. Discipline may take the form of something as informal as a discussions between a line manager and employee where some notes are made in a notebook.

20. The complainant was provided with some discretionary information by the DHSC relating to information found on its HR Expert Casework Service provider which showed there had been a small number of requests from the DHSC for advice in relation to discipling staff over the last five years. As the numbers were very small, the DHSC did not give a specific figure as it was concerned this may lead to identification of individuals.

21. The complainant had asked the question as to why if the HR Experts Casework Service provider kept records for advice in relation to disciplining SCS staff there were not also records kept centrally on SCS staff that have been disciplined.

22. The Commissioner has considered this point and notes that this refers to the formal requests for advice received about disciplinary matters – this is a good indication that action was considered and possibly taken but only accounts for any wrongdoing where advice was needed on how to proceed. As the DHSC points out there are other incidents of wrongdoing that may not have required advice to be sought but would be recorded at a local level in different ways, some may be electronic and others may be in hard copy as letters or notes.

23. As the request refers to discipline for 'wrongdoing' the Commissioner accepts this could cover a range of different incidents that would all have different levels of disciplinary action recorded in different ways so it is reasonable for the DHSC to have to conduct searches at a local level as well as centrally to identify all relevant information.

24. Given the numbers of SCS's employed in each of the last five years the Commissioner is of the view that complying with the request would exceed the cost limit. Even if the time estimates given turned out in reality to be inflated and could be reduced in half or even less then, given the number of SCS's in post in the five years covered by the

request it would exceed the cost limit to locate and retrieve the requested information.

25. The Commissioner is therefore satisfied that DHSC is correct to apply section 12(1) to the request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")[1] in providing advice and assistance, it will have complied with section 16(1).

27. The DHSC provided advice and assistance initially which suggested applying a timeframe to the request, resulting in the refined request which is the subject of this decision notice. The DHSC has stated it does not consider there is further advice or assistance that can be provided.

28. The Commissioner is therefore satisfied that the DHSC considered its obligations under section 16 to offer advice and assistance.

[1] htthttps://www.gov.uk/government/publications/freedom-of-information-code-of-practice

Right of appeal

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

30. 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.

31. 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 .....

Jill Hulley
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