

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 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 about Hormone Replacement Therapy (HRT) treatment. The Department of Health and Social Care (DHSC) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that DHSC is not obliged to comply with the request under section 12(1) and is satisfied that DHSC met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 28 October 2019 the complainant made the following request for information under the FOIA:

'To whom it may concern,

We would like to request all documents, correspondence, minutes, memorandums, and any other data held by the department relating to HRT (Hormone Replacement Therapy) treatment, medicines, and supply chains since Aug 2018.

We look forward to hearing from you.'

4. On 6 November 2019 DHSC responded and refused the request citing section 43(2), commercial interests.
5. On 6 November 2019 the complainant requested an internal review.

6. DHSC sent the outcome of its internal review on 4 December 2019. It reconsidered the request and overturned the use of section 43(2). It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £600. DHSC suggested it may be able to comply with a new request for a narrower category of information: *'if you are able to narrow down the scope of your request, for example by stating a specific type of document or by requesting the specific context of the HRT information you are seeking, then we will be able to consider your request further.'*

Scope of the case

7. On 10 December 2019, the complainant contacted the Information Commissioner to complain about the way the request for information had been handled.
8. The Commissioner's investigation has focussed on whether DHSC correctly applied section 12 to the request. She has also considered whether DHSC met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

9. 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.
10. 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.
11. 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.
12. 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?

13. 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.
14. In its submission to the Commissioner DHSC stated that in order to find *"all documents, correspondence, minutes, memorandums, and any other data"*, relating to HRT *"treatment, medicines, and supply chains since Aug 2018"*, the Department would need to search (at a minimum) the following mailboxes and hard drives of:
- colleagues in the Private Offices of all Departmental ministers (45 including Special Advisors);
 - the Communications Directorate (80 in the entire communications directorate who could have access to incoming information on HRT, 27 in the media team);
 - the Ministerial Correspondence and Public Enquiries Team (10.5, one colleague is part time);
 - the Director and all deputy directors of the Medicines and Pharmacy Directorate (seven including the Director's PA);
 - the colleagues in teams which handle pricing (14) and parallel exports (3);
 - the Women's Health Team (three who deal with HRT);
 - the Medicines and Pharmacy Directorate's electronic archive;
 - the Principal Pharmacist's mailbox;
 - the mailboxes of the eight people in the Principal Pharmacist's team (the Medicines Supply Team);

- the Medicines and Pharmacy Directorate's business support mailbox; and
 - the Business Support Team (four members).
15. DHSC estimated that it would take each of these 174.5 colleagues an average of 5 minutes (£25 per hour / 60 x 5 = £2.08) to perform an initial very basic search of their mailboxes and 6 minutes (£2.50) to search their hard drives.
16. Then DHSC stated that colleagues would need to undertake a series of actions to determine whether the information found is relevant to this request. The tasks and approximate timescales for each document are:
1. Read an email (two minutes (83 pence))
 2. Long chain emails and attachments (average of four minutes for long chain emails (£1.66), three minutes per attachment (£1.25))
 3. Determine whether the information is relevant and cutting duplicate documents/emails (three minutes per email (£1.25))
 4. Discussion with colleagues on relevance of information (three minutes per query (£1.25))
 5. Extracting the information (two minutes per document (83pence))
17. Following this breakdown, DHSC estimated the cost for each of the 174.5 colleagues to **'search their mailboxes, read and assess just one long email chain and extract the information'** would be a total of £1,015.60:
- search their mailboxes: (174.5 x £2.08 = £362.96);
 - read one long email chain: (174.5 x £1.66 = £289.67);
 - assess the relevant information: (174.5 x £1.25 = £218.13); and
 - extract relevant information: (174.5 x £0.83 = £144.84).
18. The Commissioner notes that at the internal review stage DHSC provided the complainant with the results of a different search: a search for 'HRT' in a small sample of relevant locations returned 1,863 items. DHSC estimated that at 2 minutes per item, it would take a minimum of 62 hours or £1,552.50 to identify the information requested.
19. Given the wide range of the information requested, the Commissioner accepts that DHSC would take far more than the 24 hour limit to respond to the request as phrased. She 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

20. 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).
21. The Commissioner notes that DHSC suggested to the complainant that he state a specific type of document or set out the specific context of the HRT information he is seeking. Therefore, the Commissioner is satisfied that DHSC complied with section 16.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

22. If 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

23. 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.
24. 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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