

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 September 2023**

Public Authority: **Belfast Health and Social Care Trust**

Address: **Trust Headquarters
274 Grosvenor Road
Belfast
BT12 6BA**

Decision (including any steps ordered)

1. The complainant requested from Belfast Health and Social Care Trust (the Trust) information relating to new computers/desktops for particular teams. The Trust aggregated the request with the complainant's previous requests and cited sections 12(4) and 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is the Trust was entitled to aggregate the request under section 12(4) of FOIA. However, the Commissioner finds that the Trust failed to provide a reasonable breakdown of the costs of the aggregated requests, and therefore it was not entitled to rely on section 12(1) of FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 12(1) of FOIA.
4. The Trust must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 April 2023 the complainant wrote to the Trust and requested information in the following terms:

“Can you tell me at what level of seniority requests/requisitions for new computers /desktops for particular teams/areas of responsibility need to be made?

Can you tell me at what level requests for new computer/desktops need to be approved before they can be acted upon?

I understand that two new computers/desktops have been approved for the RBHSC social work team and are due to be delivered imminently. Can you tell me on what date the request for these approvals was made and/or the date when these computers were requisitioned?

Can you tell me whether these requisitions/requests were made at Principal Social Worker level or above/below?”

6. On 24 April 2023 the Trust provided its response. It aggregated this request with the complainant’s previous requests and cited sections 12(4) and 12(1) of FOIA. On the same day the complainant asked for an internal review.
7. On 3 May 2023 the Trust provided its review response and upheld its original decision. On the same day the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the Commissioner’s investigation, the Trust maintained its reliance on the exemptions cited. It also said it should not be required to continuously comply with the complainant’s repeated requests, and that they were vexatious in nature and referred to section 14(1) of FOIA.

Reasons for decision

9. This reasoning covers why the Trust was entitled to aggregate the request under 12(4) of the FOIA, but not entitled to refuse to comply with the request (FOI/29082) in accordance with sections and 12(1) of FOIA.

10. Within its submissions to the Commissioner, he acknowledges that the Trust made reference to section 14(1) (vexatious requests) of FOIA. However, in the absence of arguments to support its position, and as the Trust had not formally cited the exemption, this reasoning will only cover the original exemptions which the Trust relied upon.

Section 12(4) – aggregation of requests

11. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)¹ can be satisfied. Those conditions require the requests to be:
- (a) made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - (b) made for the same or similar information; and
 - (c) received by the public authority within any period of 60 consecutive working days.
12. In its submissions, the Trust provided a list of all recent FOI requests received from the complainant, along with its responses and other emails between the complainant and the Trust. In answering one of the complainant’s previous requests received on 6 February 2023, the Trust presented a breakdown of time taken in locating, retrieving, and extracting the information to enable it to offer a response. This had taken in excess of 18 hours. The Trust aggregated that request with the request which is the subject of this decision notice (FOI/29082), thereby engaging 12(4) of FOIA.
13. The Trust highlighted to the Commissioner that all these requests focus around the Trust’s Social Work Directorate, regarding computers, offices or recruitment in that area.

¹ <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

14. Along with these FOI requests, the Trust said the complainant had submitted an internal grievance around the same matters and which the Trust are working to address informally. It also informed the Commissioner that this specific request is similar in subject to two of his other requests for information.

The Complainant's view

15. In the complainant's request for an internal review, he emphasised to the Trust that it refused his request because it linked it to a previous FOI request. The complainant disputed this and stated his request was "in respect of a requisition for computers for the RBHSC social work team." He said there was no reference to computers for the RBHSC social work team in his previous request of 6 February 2023 (FOI/28754).
16. Therefore, the complainant asked the Trust to review its refusal to this FOI request. He also asked the Trust if it maintains refusal "due to a perceived linkage to a previous FOI request, to make the linkage between the two explicit."

The Commissioner's position

17. The Commissioner viewed the complainant's three requests aggregated by the Trust. These were received on 6 February 2023, 14 March 2023 and on 7 April 2023. He notes the nature of these requests which are as follows:
 - FOI/28754** (11 questions) relating to a temporary social worker post within the Trust.
 - FOI/28971** (19 questions) relating to a social worker post and a computer within the Trust.
 - FOI/29082** (4 questions) relating to computers/desktops within social work.
18. The Commissioner is satisfied that these requests were made by the same complainant, made for similar information and received within 60 consecutive working days. Therefore, fulfilling the criteria set out in the Fees Regulations – regulation 5(2).
19. Having reviewed the wording of the complainant's requests, the Commissioner is satisfied that there is an overarching theme, they focus around the Trust's Social Work Directorate and the computers, offices or recruitment in that area.

20. The Commissioner finds that the Trust was entitled to rely on section 12(4) of FOIA to aggregate FOI/29082 with requests FOI/28754 and FOI/28971.

Section 12 – cost of compliance

21. Section 12(1)² 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
22. The Regulations state the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The appropriate limit for the Trust in this case is £450.
23. The Fees Regulations also specify the cost of complying with a request must be calculated at the rate of £25 per hour, meaning section 12(1) of FOIA effectively imposes a time limit of 18 hours for the Trust.
24. The Trust refused this request stating it was “yet another request for information in regards to computers within social work...” The Trust said its refusal was due to the reasons set out in its reply of 24 April 2023.
25. The Trust refused this request in accordance with section 12(1) of FOIA. It said it is not obliged to comply with any request for information if it estimates the cost of complying with the request would exceed the appropriate limit of £450 (18 hours at £25 per hour).
26. In answering the previous request – 6 February 2023 (FOI/28754), the Trust presented the Commissioner with a breakdown of time taken in locating, retrieving and extracting the information to enable the Trust to provide a response:
- “Full review of information within FOI by Principal Social Worker - **1 hour**
 - Joint review of information to further clarify information being asked between Principal Social Worker & Assistant Social Worker. Next steps decided and agreed - **1 hour**

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

- Liaison with Human Resources to organise meetings – this took time re back and forth to find a date - **1 hour**
 - Gathering and review of relevant information to share with Human Resources - **3 hours**
 - Full review of job descriptions - **1.5 hours**
 - Search for information re business cases as current staff team where not involved hence information was not instantly available - **2 hours**
 - Meeting Human Resources (HR)/Data Management Team (DMT) - **2 hours**
 - Review of HR information alongside trust data - **2 hours**
 - Formulation of response - **2 hour**
 - Review of initial response - **1 hour**
 - Return of final submission with queries - **1 hour**
 - Review meeting to discuss queries and appropriate responses thereafter - **2 hours”**
27. The Trust reiterated that given it had already spent over 18 hours in locating, retrieving and extracting information to answer the previous request (6 February 2023 - FOI/28754), it aggregated this request FOI/29082 with it, and issued a refusal notice under section 12(1) of FOIA.
28. The Trust was asked by the Commissioner to expand on the breakdown provided above. The Trust provided the Commissioner with a short explanation. It said it had a two hour meeting with HR and DMT. Also, a member of the DMT had a call for one hour but it could not confirm the length of time given by HR participants. The Trust added that DMT had an 11 minute call from a Social Worker “which could have been in relation to this.” The Trust apologised that this detail is not particularly helpful but “it’s as much as we are able to provide...”.
29. To determine whether the time stated by the Trust was reasonable, the Commissioner must consider the detail of request FOI/28754 and the Trust’s response:
- “I understand that interviews are to be held soon, in the coming week, for a temporary social work post in the RBHSC to be concerned with children with brain tumours. In relation to those interviews can you provide me with the following information:

1. How many people applied for this post that was advertised in an internal trawl to be initially for 6 months?

Less than 5. We are unable to provide an exact figure - exempt from release under section 40(2) of the FOI Act - as this could make persons personally identifiable. Disclosure would constitute a breach of the principles of the General Data Protection Regulations 2018.

2. How many people were shortlisted for interview for this post?

Less than 5. We are unable to provide an exact figure - exempt from release under section 40(2) of the FOI Act - as this could make persons personally identifiable. Disclosure would constitute a breach of the principles of the General Data Protection Regulations 2018.

3. While the advertisement for this post indicated that it was initially for 6 months, how many of the applicants for the post were aware that there was funding for this post for three years?

Information requested is not recorded by the Trust.

4. Of those who applied, how many were already working in the RBHSC as social workers (including temporarily or as temporary across site basis) when the post was advertised?

Given the low numbers involved we are unable to provide personal details relating to individual job applicants. This is exempt from release under section 40(2) of the FOI Act. Information of a personal nature is exempt from release where its disclosure would constitute a breach of the principles of the UK General Data Protection Regulations 2018.

5. How many of the candidates who applied are previously known to members of the interview panel?

Information requested is not recorded by the Trust.

6. How many of the interview panel are currently involved or responsible for providing care/social services for patients in the Royal Belfast Hospital for Sick Children (RBHSC)?

Two out of three

7. How many of the candidates were previously known to some members of the panel to have previously worked with cancer patients onsite ?

Information requested is not recorded by the Trust.

8. Of the candidates for this post, were any of them previously involved in creating a business plan for this post in collaboration with either/or both (Named Person) and (Named Person) ?

Information requested is not recorded by the Trust.

9. Were any of the candidates involved in discussions with medical professionals in

Information requested is not recorded by the Trust.

10. Have any of the candidates for this post already been provided with a private office within the confines of Royal Belfast Hospital for Sick Children (RBHSC)?

No Social Worker within RBHSC has a private office except for the Senior Social Worker who has an allocated office.

11. How many of the candidates who applied that were aware that that there was funding for 3 years as in question 3 above(as was known to all social workers working in the RBHSC at the time of the advertisement)above also are candidates in response to questions 4, 5, 7, 8, 9, 10?

Information requested is not recorded by the Trust."

30. Having considered the tasks needed to be carried out to comply with the above request, the Commissioner finds the explanation from the Trust does not make a compelling argument. He notes that six out of eleven responses are for information not held by the Trust, that there is little time assigned to searching for information, and that a lot of time was spent on unspecified 'review' and 'liaison' activity. The submissions were not sufficiently detailed and the time allocated to each element appears to be over generous and lacking proportion to the nature of the questions.
31. Given the lack of cogent evidence of its cost breakdown in locating, retrieving and extracting the information to enable the Trust to provide a response FOI/28754, the Commissioner finds that aggregating request FOI/29082 does not exceed the costs limit.

32. Therefore, the Commissioner's decision is section 12(1) of FOIA is not engaged in this instance. The Trust was not entitled to rely on this exemption to refuse to comply with the request, and should take the step described in paragraph 3 of this notice.

Right of appeal

33. 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

34. 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.
35. 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

Joanna Marshall
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