

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2018

Public Authority: Cardiff and Vale University Health Board

Address: CAV_FOI.Requests@wales.nhs.uk

Decision (including any steps ordered)

1. The complainant requested information about complaints received by Cardiff and Vale University Health Board ('the Health Board'). The Health Board provided information in relation to one part of the request and applied section 12(1) to the other parts of the request, as compliance would exceed the appropriate limit. The Commissioner's decision is that the Health Board has correctly applied section 12(1) to the request. She does not require any steps to be taken.

Request and response

2. On 29 March 2018, the complainant wrote to the Health Board and requested information in the following terms:

"I wish to have access to the following information.

a. How many complaints have been made about inpatient care at the University Hospital of Wales during the past year?

b. How many of the above complaints have been associated with patient deaths?

c. How many direct complaints have been made about Complaints Team overseeing complaints at the University Hospital of Wales".

3. The Health Board responded on 10 May 2018 and provided information relating to part (a) of the request but stated that compliance with parts (b) and (c) of the request would exceed the appropriate limit under section 12 of the FOIA.

4. On 20 May 2018 the complainant requested an internal review of the Health Board's handling of the request, and its contention that it would take longer than 18 hours to comply with parts (b) and (c) of the request..
5. The Health Board provided the outcome of its internal review on 12 June 2018 and upheld its decision that section 12 of the FOIA applied to parts (b) and (c) of the request.

Scope of the case

6. The complainant contacted the Commissioner on 6 June 2018 to express his dissatisfaction with the Health Board's handling of the request.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Health Board correctly applied section 12 of the FOIA to parts (b) and (c) of the request.

Reasons for decision

Section 12 – the appropriate limit

8. Section 12(1) of 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.
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Health Board. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Health Board
10. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.

11. The Health Board advised that complaint files rarely relate to one single issue and cover several matters, many of which will only be contained within the body of a complaint. Also, the Health Board advised that it is common practice for the nature of a complaint to change during the course of its investigation as additional concerns are raised either in writing, by telephone or during meetings. In addition, it is relatively common that the nature of a complaint will change/expand if the individual makes a subsequent referral to the Public Services Ombudsman for Wales ('the PSOW'). In light of these issues, the Health Board contends that, in order to identify information relevant to the request, it would be necessary to review the entirety of each complaint file received during the period covered by the request.
12. The Health Board has estimated that it will take an average of 20 minutes to review each complaint file covered by the period of the request to ascertain whether it falls within the scope of the categories referred to in the request. The Health Board confirmed that it received 575 complaints during the period. As such, its estimate for compliance with the request is $575 \times 20 \text{ minutes} = 191 \text{ hours and } 40 \text{ minutes}$.
13. The Health Board advised the Commissioner that information relating to the request is held within a database. Whilst complaints are categorised by subject matter, there are categories which meet the terms of the request, ie categories relating to 'patient deaths' or 'complaints about the complaints team overseeing complaints'. The Health Board advised that the categories in use are consistent across all NHS Wales Health Boards. The Health Board are not required to report on complaints specifically relating to the subject matters associated with the request and as such it has no reason to record/store the information in such a format. In view of this, it would not be possible to conduct an electronic search based on specific complaint categories in order to extract the information requested.
14. The Health Board explained that when a complaint is initially made, the initial contact can range from a single page letter up to a ten page document. In addition, the size of each complaint record can vary considerably based on the complexity of the case. A comparatively small complaint may consist of 20 individual documents, however, more complex cases can consist of over 100 separate documents. Many of the documents within the complaints database are held in PDF format and are handwritten and scanned on the system. This prevents any keyword searches being undertaken. In addition, some complaints will also include recordings of meetings held to discuss the matter, which can often last up to two hours. Such meetings are not transcribed and as such it would be necessary to listen to each recording to determine what issues were discussed.

15. Even if it were possible for the Health Board to perform a keyword search on all documents, it does not consider it feasible to exhaustively cover the innumerable ways of referring to the categories of complaint covered by the request. For example, a complaint relating to a patient death can often be referred to without using the words 'death', 'died' or 'deceased'. For example, a complaint about a patient death could include a statement that someone "*would still be here if....*". With reference to complaints regarding dissatisfaction with the way the complaints team have investigated a complaint, it would be more difficult to consider what keyword searches would identify such complaints. The Health Board also confirmed that it does not have a separate system or even a separate complaint category for complaints against the complaints team itself and such complaints form part of the initial complaint itself.
16. During the course of the Commissioner's investigation, a member of her staff visited the Health Board to view a sample of the withheld information. She was also given the opportunity to view the complaints database and how complaints are recorded to gain a better understanding of the processes involved in complying with the request. A few examples of some of the complaint files that were viewed during this visit are summarised below:

Example 1

This complaint record contained approximately 45 documents. The initial complaint related to an administration function of the Health Board. It is only towards the end of the investigation and during a 90 minute recording of a meeting with the individual that any reference is made to concerns about the death of the patient in question.

Example 2

This complaint record contained approximately 20 documents, which is considered to be a smaller complaint file. The initial complaint letter is several pages in length which would take several minutes to read. There is no mention of any concerns about a patient death until after the Health Board had completed its investigation when the complainant referred the matter to the PSOW.

Example 3

This complaint record contained over 100 documents, including recordings of two meetings to discuss the matter. The initial complaint related to clinical care issues rather than the death of any patient. It is only eight months after the initial complaint was raised and after significant correspondence had taken place was an allegation raised in relation to a patient death. The Health Board considers this complaint

file to be an extremely large and complex complaint which would take considerable time to scrutinize.

17. The Commissioner asked the Health Board whether it would be possible, within the appropriate limit, to provide details of the number of complaints falling within the scope of the request based on the initial cause/reason for the complaint. The Health Board advised such analysis would require it to review 575 documents, some of which are several pages long, at an average of less than 2 minutes per document (18 hours /575 = 113 seconds). The Health Board's position is that even if it were possible to carry out this task within the appropriate limit, it would not identify all the information held as it is extremely common for additional issues to be raised during the duration of a complaint.
18. The Health Board has not conducted a specific sampling exercise in order to determine whether compliance with the request in this case would exceed the appropriate limit. However, its estimate has been made following consultation with its complaints team who are highly familiar with the material recorded on complaint files and the amount of time required to review and analyse the data held. Because of the amount of information caught by the request and the fact that it would be necessary to review the entirety of each complaint file, the Health Board does not consider that any sampling exercise would have provided any additional relevant information in support of its estimate for compliance with the request.
19. On considering the arguments put forward by the Health Board the Commissioner has taken into account the amount of information which would need to be reviewed manually in order to determine what recorded information is held relevant to the request. As referred to earlier in this notice, a member of the Commissioner's staff visited the Health Board's offices to view how information relevant to the request was held, and to determine why it was necessary to manually review the entirety of each complaint file rather than conduct any simpler, electronic searches.
20. The Commissioner is satisfied that the Health Board has provided a cogent explanation for why compliance with the requests would exceed the appropriate cost limit. She is also satisfied that it would only be able to gather the requested information by manually reviewing the entirety of each complaint file. Given the number and size of the files caught by the request the Commissioner considers that it is evident that to do so would be a time consuming process. The Commissioner is not aware of any reasonable alternative mechanism to determine the number of complaints associated with patient deaths or the complaints team overseeing complaints other than the processes detailed by the Health Board.

21. Based on the nature of the information requested and the way in which it is recorded and held, the Commissioner accepts that it would significantly exceed the appropriate limit of 18 hours to comply with parts (b) and (c) the request. Therefore she accepts the estimate and her decision is that the Health Board correctly applied section 12(1) of the FOIA to the request.

Right of appeal

22. 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

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

David Teague
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