

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 September 2023

**Public Authority:** Lancashire Teaching Hospitals NHS  
Foundation Trust

**Address:** Royal Preston Hospital  
Sharoe Green Lane  
Fulwood  
Preston PR2 9HT

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information regarding the appointment of "Insight" and "T-Pro" from the Lancashire Teaching Hospitals NHS Foundation Trust ('the Trust').
2. The Commissioner's decision is that the Trust was entitled to rely on Section 12(4) and Section 12(1) when refusing to respond to the requests.
3. The Commissioner also finds that the Trust breached section 17 by failing to provide an appropriate refusal notice within 20 working days of the first request being made.
4. The Commissioner does not require further steps.

#### **Request and response**

---

5. On 16 March 2023, the complainant wrote to the Trust and requested information in the following terms:
  - a. Full details of the framework based on which the Trust appointed Insight, including:
    - i. the contract notice advertising the framework; and
    - ii. the framework agreement (including the services schedules

and any service levels or key performance indicators and call-off procedure);

- b. The contract between the Trust and Insight, including the description of services and the specification. In the interests of protecting confidentiality, we recognise that the Trust may redact the financial provisions;
  - c. Any Trust internal business cases relating to the appointment of Insight and/or to the appointment of T-Pro;
  - d. The contract appointing T-Pro, including the description of services and the specification. In the interests of protecting confidentiality, we recognise that the Trust may redact the financial provisions;
  - e. The dates on which contracts with Insight and T-Pro were executed.”
6. The Trust provided a responded outside of FOIA on 5 April 2023.
  7. On 24 April 2023, the complainant wrote to the Trust and requested information in the following terms:
    - “ 1. Please provide copies of the following for all services provided to the Trust by Norty Limited trading as T-Pro (“**T-Pro**”):
      - Data Protection Impact Assessment;
      - International Data Transfer Agreement;
      - Transfer Risk Assessment;
      - Data Processing Agreement; and
      - Digital Technology Assessment Criteria.
    2. Please provide copies of any Trust assessment or due diligence (such as review of a selection questionnaire) conducted on the services provided by T-Pro.
    3. Please provide the scope or statement of work documents which the Trust provided to Insight Direct (UK) Limited (“**Insight**”), including the date on which those documents were sent, setting out its requirements for the provision of any of the following services:
      - Digital Dictation
      - Speech Recognition
      - Outsourced Transcription.

4. Please provide any Trust internal communications including email relating to:
  - a. The appointment of, or an award to, Insight and / or T-Pro to provide any of the services listed in paragraph 3; and / or
  - b. any variation to the Trust's contracts with Insight and / or T-Pro for the provision of the services listed in paragraph 3.
5. Please provide:
  - a. Any communications, including emails, between the Trust and Insight relating to the appointment of, or an award to, Insight to provide any of the services listed in paragraph 3 (including any tender or proposal and any other emails or correspondence);
  - b. any clarifications sought by the Trust in relation such tender or proposal; and
  - c. any responses by Insight to any such Trust questions or requests for clarifications.
6. Please provide:
  - a. Any communications, including emails, between the Trust and T-Pro relating to the appointment of, or an award to, T-Pro to provide any of the services listed in paragraph 3 (including any tender or proposal and any other emails or correspondence);
  - b. any clarifications sought by the Trust in relation such tender or proposal; and
  - c. any responses T-Pro to any such Trust questions or requests for clarifications.
7. Please provide details of any meetings (whether formal or informal) between Trust officers and T-Pro from 1 March 2022 to date. Where notes exist in relation to those meetings, please provide copies.
8. Please provide copies of any communications, including email, relating to:
  - a. The introduction of T-Pro to the Trust;
  - b. The introduction of T-Pro to the Trust by Insight;
  - c. The introduction of T-Pro to Insight by the Trust;
  - d. The invitation of T-Pro to demonstrate its solutions to the Trust; and

- e. The Trust's evaluation of T-Pro's solution and the specification against which it was evaluated."
8. The Trust provided its full response to both requests under FOIA on 24 May 2023. It advised it was refusing to comply with the requests under section 12 of FOIA.
9. Following an internal review the Trust wrote to the complainant on 30 June 2023. It stated that it was upholding its original response to the requests.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 19 June 2023 to complain about the way their requests for information had been handled.
11. As the Trust has decided to aggregate these requests, the Commissioner will investigate both requests in this Decision Notice.
12. The Commissioner considers that the scope of his investigation is to consider whether the Trust is correct to rely on section 12 when refusing these requests.

### **Reasons for decision**

---

#### **Section 12(4) – Aggregation of related requests**

13. 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")<sup>1</sup> can be satisfied.
14. Section 12(4) of FOIA states:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

---

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

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

15. Similarly, Regulation 5 of the Fees Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which – (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

16. The Commissioner has reviewed the complainant’s requests submitted to the Trust on 16 March 2023 and 24 April 2023. He is satisfied that both of these requests were submitted by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).

17. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner’s view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit (see footnote 1 above).

18. Having reviewed the wording of the complainant's requests, the Commissioner is satisfied that there is an overarching theme, namely the Trust's involvement with Insight and T-Pro.
19. The Commissioner is therefore satisfied that the Trust was entitled to rely on section 12(4) of FOIA to aggregate these requests.

## **Section 12 – Cost of Compliance Exceeds Appropriate Limit**

20. The reasoning below examines whether the Trust was entitled to rely on section 12(1) of FOIA to refuse to comply with the requests.
21. Section 12(1) 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.
22. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
23. The applicable cost limit in this case is £450, which is equivalent to 18 hours of work.
24. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Trust was reasonable; in other words whether it estimated reasonably that the cost of compliance with the requests would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the requests.
25. The Commissioner asked the Trust to provide an estimate for the costs of complying with the aggregated requests.
26. The Trust advised the Commissioner that based on just two of the questions within the second request, the cost of compliance would be exceeded.

27. The Trust explained that for question 7 of the second request, one staff member identified 232 meetings. The Trust estimated it would take five minutes to identify a meeting, conduct a manual search of digital and paper records in order to provide details and notes. This information would then need to be reviewed to determine if relevant to the request. The Trust advised this could equate to 19 hours and 20 minutes' worth of work.
28. A second member of staff identified an additional 132 meets and stated this would also take five minutes to review each meeting which would equate to an additional 11 hours and therefore make the combined total 30 hours and 20 minutes.
29. The Trust then went on to review the time it would take to answer question 8 and the Trust again asked two agents to attempt this task. The first member of staff identified 7706 emails which contained the search term "T-Pro". The Trust advised that each email would need to be retrieved and reviewed for information within the scope of the request. The Trust estimated that this would take one minute per email and come to total of 129 hours.
30. The Trust explained that the second member of staff identified a further 4182 emails, which would also take around one minute per email to review. The Trust informed the Commissioner that this would take around 70 hours, bringing the combined total to around 199 hours.
31. The Trust concluded that the above estimates only cover two questions of the two requests and estimated to respond to the remaining questions it would take a further 43 hours.
32. Based on the information provided by the Trust, the Commissioner is satisfied that the Trust was entitled to rely on section 12(1) of FOIA to refuse the requests.

### **Section 16 – advice and assistance**

33. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
34. The Commissioner is satisfied that the Trust did conform with its duties under section 16, by explaining to the complainant that a reduced and refined request for information may enable information to be provided within the cost limit.

## **Procedural matters**

---

35. The Trust breached section 17 of FOIA by failing to provide a refusal notice to the first request within 20 working days.

## **Other matters**

---

36. Whilst the Commissioner acknowledges that there was some confusion around whether the first request was a request for information or not, he must remind the Trust that an applicant does not need to quote FOIA in order for a request to be valid.



## Right of appeal

---

37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**