

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

Public Authority: Sandwell and West Birmingham Hospitals NHS Foundation Trust

Address: City Hospital
Dudley Road
Birmingham
B18 7QH

Decision (including any steps ordered)

1. The complainant requested information from Sandwell and West Birmingham Hospitals NHS Foundation Trust ('the Trust'), relating to injury allowance claims, particularly those relating to work related stress. The Trust refused to comply with the requests citing section 12 of FOIA (cost limit).
2. The Commissioner's decision is that the Trust was entitled to refuse to comply with the requests in accordance with section 12(1) of FOIA. However, the Commissioner also finds that the Trust failed to comply with its obligations under section 16 to offer advice and assistance. The Trust also breached section 17(1) as it didn't provide a refusal notice within the statutory time frame.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - Either provide the complainant with advice and assistance to help them submit a refined request or explain to them why it would not be reasonable in the circumstances to do so.
4. The Trust must take this step 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 25 August 2023, the complainant made the following request for information to the Trust:

"Please would you provide me with the following information under the Freedom of Information Act 2000.

1. How many "injury allowance" claims have been made to SWBH trust in the last 12 months?
2. Of this how many were successful?
3. For the same 12 month period how many "injury allowance" claims were made for "work related stress" ?
4. How many of the work related stress claims were successful?"

6. On 28 August 2023, the complainant submitted another request. They clarified the time period for the information they'd requested on 25 August 2023 and asked two additional questions:

"Please accept my FOI request as follows:

1. How many "injury allowance" claims have been made to SWBH trust in 2022
 2. Of this how many were successful?
 3. For the same period, 2022 how many "injury allowance" claims were made SOLELY for "work related stress" ?
 4. How many of the SOLELY "work related stress" claims were successful in 2022?
 5. How many Injury allowance claims have been made this Year 2023 so far for SOLELY work related stress?
 6. How many SOLELY for work related stress claims have been successful so far this Year 2023?"
7. The Trust responded on 20 October 2023. It only responded to the questions of the original request of 25 August 2023. The Trust stated that it estimated there were one to five members of staff covered by the request and that it could not provide the rest of the requested information within the cost limit.

8. On 27 October 2023, the Trust provided its internal review response and maintained its original position that the requested information could not be provided within the cost limit.

Scope of the case

9. The complainant contacted the Commissioner on 2 November 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the Trust has correctly cited section 12(1) of FOIA in response to the requests of 25 August 2023 and 28 August 2023. The Commissioner has also considered whether the Trust met its obligation to offer advice and assistance under section 16 of FOIA, and the timeliness of its refusal.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) 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”).
12. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Trust relied on section 12(1) in this case.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Trust is £450.
14. 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 Trust.
15. 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.
16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

19. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Trust to provide a detailed estimate of the time or cost it would take to provide the information falling within the scope of this request.
20. In its submission to the Commissioner, the Trust explained that it could partially answer the second and third questions on the basis that its payroll team could identify any employees where “injury allowance at work” payments had been received. This is why it advised the complainant that it estimated there were one to five members of staff that could be in scope of the requested information. However, it advised that it was not confident that this information was correct as line managers are responsible for making the classification and authorising it on electronic systems. The Trust stated that as a result there is a level

of uncertainty about whether the information is correct, and as a result all staff records would need to be checked.

21. The Trust added that even if HR staff were to ask line managers directly if they knew of any staff falling under these categories, it would be very dependent on who was available at the time and the Trust acknowledged that it had already exceeded the time for compliance when providing a response to the request.
22. The Trust stated that the requested information was not logged centrally in the level of detail requested. It explained that it would be held by the management chain within the relevant departments and possibly within its Occupational Health team. The Trust determined that it would need to check all staff records to see if they held information linked to the first and third questions. The Trust advised it employs over 7000 members of staff over at least eight locations where individual records would have to be checked.
23. The Trust explained that where central records were held, these were only the ones where a claim had been accepted and would not include where a claim had been rejected.
24. In their complaint to the Commissioner, the complainant highlighted that the Trust had not considered their second request. The Commissioner asked the Trust if it had considered that request in its responses, and the Trust stated that it had not, but it considered that the cost limit would still apply to the later request.
25. The Commissioner considers that the Trust estimated reasonably that it would take more than the 18-hour limit to respond to the request. The Trust was therefore correct to apply section 12(1) of FOIA to the complainant's requests of 25 August 2023 and 28 August 2023, given that the later request expanded the scope of the requested information.

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

26. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request if it's reasonable to do so. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within

the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

27. The Commissioner notes that the Trust did not provide any advice and assistance to the complainant in its response. It provided an explanation about requesting personal information in its internal review response but did not provide any guidance on how the complaint could refine their request to bring it within the cost limit, nor did it explain why it wouldn't be possible to do this.
28. The Commissioner therefore does not consider that the Trust has provided reasonable advice and assistance and has thus failed to comply with section 16 of FOIA.
29. The Trust must now either provide advice and assistance to help the complainant submit a refined request for information or it must explain why it would be unreasonable in the circumstances to do so.

Procedural matters

30. The Commissioner finds that the Trust also breached section 17(1) of FOIA by failing to provide a section 12 refusal notice within 20 working days of the request.

Other matters

31. The Trust failed to recognise the later request that was submitted by the complainant, and which was provided again as part of their request for an internal review. This request clarified the original four questions and asked two additional questions. The Commissioner is satisfied that the second request would not have changed the Trust's reliance on section 12 of FOIA, but it should have been logged and at least considered as part of the internal review response when flagged by the complainant.

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

Right of appeal

32. 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

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

33. 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.
34. 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