

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2024

Public Authority: Cambridge University Hospitals NHS
Foundation Trust

Address: Hills Road
Cambridge
CB2 0QQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the Epic electronic patient record system. Cambridge University Hospitals NHS Foundation Trust (“the public authority”) refused to comply with the request, citing section 12 (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner’s decision is that:
 - The public authority was correct to refuse the request under section 12.
 - The public authority has complied with its section 16 (advice and assistance) obligations.
3. The Commissioner does not require further steps.

Request and response

4. On 25 July 2023 the complainant requested the following:
 - “1. All notes, drafts, emails, telephone recordings/transcripts, memos, agendas and Minutes regarding the operation of the Epic electronic patient record system between January 2017 and the present day. In particular, I am interested in information relating to the discovery of an error in the operation of that system which meant that Alerts were not being added to the system correctly.
 2. All correspondence between CUH and Epic in that timeframe.
 3. All notes, drafts, emails, telephone recordings/transcripts, memos, agendas and Minutes regarding the action plan to remedy the issue(s) outlined above, including whether a retrospective check was completed to understand the scope of the issue(s) and, if so, how many patients had been affected once that check was complete.
 4. All notes, emails, telephone recordings/transcripts, memos, agendas and Minutes regarding whether those affected by the issue(s) outlined above should be informed and who was responsible for these decisions.”
5. The Trust responded on 8 August 2023, refusing to provide the requested information, citing section 12(1) (cost of compliance exceeds appropriate limit).
6. The complainant requested an internal review on 23 August 2023.
7. The Trust provided the outcome of its internal review on 29 September 2023, upholding its position in relation to section 12(1).

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

8. This decision notice concerns section 12 of FOIA. Details of this section of FOIA can be found in the Commissioner’s [decision notice support materials](#).

9. In this case, the public authority has explained:

"The only place that any information could be held that would answer the above is on our QSIS system, this system records the incidents that take place in the Trust. There is no category on the incident log that would relate to the questions asked above so all incidents would need to be reviewed.

From 2017 to date there are 31,599 incidents logged. The description from each incident would need to be reviewed. We have reviewed a number of incidents to gauge how long it would take to read the description of each incident. This review has shown that it would take 10 seconds to read the description, we could therefore review a maximum of 360 per hour. To review all incidents would take 87 hours."

10. A public authority is expected to provide a sensible, realistic estimate which is based on cogent evidence. Such an estimate often involves the public authority carrying out a sampling exercise which the public authority has done in this instance.

11. When considering section 12, the Commissioner expects any such estimate to be based on the quickest method of retrieving information within the scope of the request.

12. The public authority has explained to the Commissioner that:

"The team responsible for our (electronic patient records) EPR have confirmed that they do not hold central records that would answer the above questions."

13. This is logical to the Commissioner, the QSIS system is where the incidents are recorded but if there is no category for system errors and alerts not being added to the system correctly, a manual review of all incidents would be the only way to fulfil the request.

14. The Commissioner considers the public authority's estimate of ten seconds per incident description as reasonable. However, even if the public authority became doubly efficient, reviewing all 31,599 incidents logged, to ascertain which fell within the scope of the request, would still take 43 hours.

15. As soon as one part of a request exceeds the appropriate limit, the whole request can be refused under section 12(1).

16. The Commissioner has no doubt compliance with the request would exceed the appropriate limit of 18 hours for the public authority. Therefore, the public authority was entitled to refuse it.

Section 16 – advice and assistance

17. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
18. In their internal review request, the complainant specifically asked the public authority to offer such advice and assistance, since their request was being refused under section 12(1).
19. In its internal review outcome, the public authority suggested that the complainant submit a complaint, based on the incident that led to them to submit their request.
20. However, a public authority's duty under section 16 of FOIA is specific; it's not about being generally helpful to the requestor. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request to one that would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
21. During this investigation, on 9 May 2024, the public authority wrote to the complainant and explained:

“As the QGIS system is the only place that system errors may be recorded our only option would be to request an extract of incidents raised and review these incidents to identify any that would fall within the remit of your request, up to the 18 hours limit.

We could request an extract from March 2017 to date. As each incident is categorised, we may be able to exclude some to focus on the type of incidents that may be relevant to review, I would be happy to give you a proposal of the types of incidents that we would exclude ahead of us undertaking the review. We could then either review from March 2017 in date order or focus on specific periods if you prefer. Following this review, we would be able to provide a response to your request and provide an overview of how many incidents we reviewed.”
22. The Commissioner is satisfied that the public authority has now offered appropriate advice and assistance to the complainant, to help them refine their request to fall within the appropriate limit.
23. However, he notes that if such advice and assistance had been provided during the public authority's original handling of the request, a complaint to the Commissioner might have been mitigated.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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