

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2024

Public Authority: South West Ambulance Service
Address: Trust Headquarters
Abbey Court
Eagle Way
EX2 7HY

Decision (including any steps ordered)

1. The complainant has requested information about allegations of child sexual abuse made against staff. The above public authority (“the public authority”) relied on section 12 of FOIA to refuse the request.
2. The Commissioner’s decision is that the public authority has not demonstrated that section 12(2) of FOIA applies to parts [1], [2] and [3] of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to parts 1 and 2 of the request, that does not rely on section 12(2) of FOIA or a claim that the cost of identifying whether information is held would exceed £450.
4. The public authority must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 July 2024, the complainant requested the following information:
 - "[1] A list of the number of all employees accused or arrested on charges of child sexual abuse from January 1, 2019, until the day this request is fulfilled. Please consider the timeframe listed in request (1) above for all subsequent requests below.
 - "[2] A breakdown of the different crimes reported: rape, grooming, groping, lewd acts, anal or vaginal penetration, and other examples listed as crime by the Home Office.
 - "[3] All disciplinary files or records of employees investigated for child sexual abuse. This request relates to employees whose names have already been released into the public domain and as such, Section 40 of the Act which exempts sensitive information on the identity of these employees cannot be applied to this request.
 - "[4] An annual summary from 2019 of all legal costs, settlements, or restitution paid to affected families of these children."
6. On 23 July 2024, the public authority responded. It relied on section 12 of FOIA to refuse parts [1], [2] and [3] of the request. It relied on section 21 of FOIA to withhold information within the scope of part [4] as it was already reasonably accessible. The public authority upheld its position following an internal review.

Reasons for decision

7. The complainant has not challenged that the information within the scope of par [4] is already reasonably accessible to her. The Commissioner has therefore confined his analysis to how the public authority dealt with the remainder of the request.
8. Section 12(2) allows a public authority to refuse to confirm or deny that information is held, if the cost of establishing whether any information is held would, on its own, exceed the cost limit.
9. The cost limit for the public authority is £450 and is the equivalent of 18 hours of staff time.
10. In order to engage the exemption, the public authority must reasonably estimate that the cost of establishing whether any information is held would exceed £450. That process of estimation must be realistic and support by cogent evidence.

11. The Commissioner asked the public authority to explain how it had arrived at its estimate and what work would be involved. The public authority responded to say that:

"We exempted this under section 12 previously to the requestor, since going back to our HR department following this complaint as they hold this data they have confirmed that over the past 5 years they [sic] would be approximately [sic] 250 formal investigations and about 500 case reviews which we they [sic] would need to individually review to determine whether [sic] there were any child abuse concerns included which they then referred over to the police. When they review these reports it takes about 2 hours per report, seeing as there are over 750 of these in their entirety this exceeds the cost limit set by the ICO."

12. In support of this argument, the public authority provided a graph which the Commissioner understands to show the number of case reviews carried out by HR since 2017. It shows separate trends for "Consideration of scope of practice", Disciplinary, Bullying & Harassment, Performance & Development and Grievance cases.

13. The Commissioner asked the public authority to clarify exactly what the graph showed and how it was relevant to allegations of child sexual abuse.

14. He also asked the public authority whether it had considered any records that it might hold elsewhere in the organisation. In particular, he asked whether, when an accusation of this kind was made, the public authority's safeguarding team would be notified.

15. The public authority responded to say that:

"Our Safeguarding team maintain minimum records with the main case records being maintained by our HR team. Our Safeguarding team do not capture explicit details in relation to the allegations – as this would not be appropriate. The Safeguarding team also do not hold patient details so could not provide ages, only adult or child.

"From a HR point of view, the cases would be heard as a disciplinary, and it is the number of disciplinary cases that would deem this such an extensive task – it is there [sic] view of all these cases that would require an extensive/excessive amount of time."

16. In respect of the graph, the public authority told the Commissioner that:

"There are no child sex abuse cases within the graph, and they are not captured within grievance. This is because we don't manage these types of investigations in our Trust – because we're not qualified to

investigate these. Instead, we refer over to the police for them to investigate under criminal law proceedings.”

The Commissioner's view

17. The Commissioner is not satisfied that the public authority has demonstrated that its estimate is reasonable.
18. Firstly, the Commissioner is not satisfied that the public authority is using the most efficient method of searches. Whilst the HR department may take the lead in dealing with any complaints or accusations, where the accusations relate to child sexual abuse, the Commissioner would have expected the public authority's safeguarding team to be involved.
19. The public authority's response indicates that this would indeed be the case, but it has been unclear about the records this team does in fact hold. If those records can be linked back to the respective HR files, then the information in question would be much easier to identify than trawling every HR file in the hope it might contain something.
20. Furthermore, the public authority has noted that any investigating would need to be done by the police. Referrals to the police would provide another source of records which could then be used to identify relevant HR files.
21. Even if these sources did not identify all relevant information and the public authority were required to carry out a manual trawl of HR files, the Commissioner is unclear about the total amount of files that would require review or how long it would take.
22. The public authority has referred to 250 investigations and a further 500 case reviews – but it's not clear from the graph how it has arrived at this figure. From its responses, the Commissioner understands that child sexual abuse accusations would be dealt with under the “disciplinary” category (and it is difficult to see how they would fall under any other category), yet the total number of disciplinary cases for the whole seven year period covered by the graph doesn't appear to exceed 700 – let alone for the five year period covered by the request.
23. If the graph is, as the public authority's subsequent submission suggests, completely irrelevant, it is even less clear how the public authority has arrived at this, or indeed any, figure.
24. The Commissioner is also not persuaded that two hours per file is a reasonable estimate. The public authority has not put forward any evidence that supports this. The Commissioner can accept that some of the most complex files may take this long but finds it difficult to accept that all files will be this complex.

25. The public authority has not provided any evidence of having carried out a sampling exercise and so cannot demonstrate that such a high figure is typical.
26. The Commissioner therefore considers that the public authority has not demonstrated that the cost of establishing whether information is held would exceed the cost limit. Consequently, it is not entitled to rely on section 12(2) of FOIA and must now issue a fresh response to the request.
27. Although the public authority applied section 12(2) to parts [1], [2] and [3] of the request, the Commissioner only requires a response to be provided to parts [1] and [2].
28. If any information were held within the scope of part [3], the Commissioner considers that, based on the wording of the request, it would either be in the public domain already (and therefore exempt under section 21 of FOIA) or it will be the criminal offence personal information of the person accused.
29. Criminal offence personal information receives special protection under data protection law and can only be disclosed under FOIA either with the consent of the data subject, or if the data subject has manifestly made the information public themselves. The Commissioner considers that any information which had manifestly been made public would be exempt under section 21 of FOIA. In the circumstances, consent would be unlikely to be forthcoming.
30. As complying with parts [1] and [2] would reveal whether any information would be held within the scope of part [3] and as the information within the scope of part [3] (if any were held) would be exempt, the Commissioner does not consider it would be proportionate to require the public authority to address this part.

Other matters

31. The Commissioner notes that, had he found section 12 to be engaged, he would have found a breach of section 16 of FOIA because the public authority failed to provide any advice and assistance.
32. A public authority relying on section 12 of FOIA to refuse a request must provide the requester with reasonable advice and assistance to help them narrow their request such that it falls within the cost limit. Alternatively, it can explain that the request cannot be meaningfully refined. In this case the public authority did neither.

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: 0203 936 8963

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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF