

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

### **Decision notice**

**Date:** 23 May 2025

**Public Authority:** NHS England  
**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

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

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1. The complainant has requested information on grievances. NHS England (NHSE) refused the request under section 12 FOIA.
2. The Commissioner's decision is that NHSE was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that NHS England complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps.

### **Request and response**

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4. The complainant made a request for information to NHSE on 18 June 2024. The request asked:

"Part 1:

1) How many formal grievances have been raised by NHS England employees, between 1 April 2022 and 30 May 2024?

2) How many of these formal grievances have not yet been investigated?

- a) What are the reasons for these formal grievances not being investigated?
- 3) How many of these formal grievances have not yet been progressed to a grievance panel hearing?
- a) What are the reasons for these grievance not being progressed to a grievance panel hearing?
- 4) Of the formal grievances that have been raised, investigated and closed in accordance with NHS England grievance policy and procedure, what is the average timeframe from raising to closure?
- 5) How many related/secondary grievances been raised to complain about a lack of progress with the initial grievance within a reasonable timeframe?
- a) If so, how many?
- 6) What is the longest timeframe for the formal grievance(s) which are currently unresolved?
- 7) What system does NHS England to record and analyse formal grievances and their progress?

Part 2:

How many of the formal grievances raised between 1 April 2022 and 30 May 2024 related to:

- 1) A breach of terms and conditions of employment
- 2) Deductions from wages
- 3) Whistleblowing

Responses for each query at both parts 1 and 2 to be broken down into date ranges of:

- 1 April 2022 – 31 March 2023
- 1 April 2023 – 31 March 2024
- 1 April 2024 – 30 May 2024"

5. NHSE responded on 27 September 2024, providing an approximate answer for question 1 of part 1 of the request but refusing to respond to the other questions in parts 1 and 2 citing section 12 FOIA – cost limits. NHSE upheld this position in its internal review response on 25 October 2024.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 18 November 2024 to complain about NHSE's refusal of their request.
7. The Commissioner considers the scope of his investigation is to determine if NHSE has correctly refused to respond to the remaining parts of the request as it would exceed the cost limit under section 12 FOIA to do so.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

8. 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").
9. 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 NHS England is £450.
10. 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 NHS England.
11. 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.
12. 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. 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.
13. 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.
14. 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.

### **The complainant's position**

15. The complainant has argued the request was submitted in two parts deliberately: part 1 asked for statistical data which should have been "readily available in any information management system" and part 2 asked for reasons for grievances being raised.
16. The complainant has stressed that NHSE has focused on only one small bit of part 2 of the request relating to whistleblowing when explaining why section 12 has been cited but that part 2 also asked about grievances raised for other reasons.
17. The complainant argues that even if part 2 cannot be complied with inside the cost limits NHSE has not explained why the remainder of part 1 of the request cannot be answered.

### **NHS England's position**

18. NHSE's internal review response did focus on the part of the request asking how many formal grievances related to whistleblowing. This is because this was considered to be the most time-consuming part of the request.
19. NHSE explained that information would be held on the number of formal grievances raised in the time periods specified, but its case management system wouldn't be able to generate a report on the number of those

grievances related to whistleblowing (or the other stated reasons of breaches of employment terms or deductions in wages). It explained that the Freedom to Speak Up Team (FTSU) would hold information as well but again could not generate a report on the number of whistleblowing cases related to grievances.

20. NHSE had identified over 450 FTSU cases in scope of the time period specified in the request and had stated reviewing these would exceed the 18 hour time limit as it would take more than 10 minutes to review each case to determine if it contained relevant information for this one part of the request.
21. NHSE did go on to clarify that even if it was able to identify the number of grievances relating to whistleblowing, to comply with the rest of the request would then add on more time as the request asked for the status of each case which would require the HR team cross referencing details from the cases against their records.
22. NHSE explained to the Commissioner that it had estimated it would take approximately 75 hours to review the 450 FTSU cases at an average of 10 minutes per case to determine if they were relevant to the request ie whether the whistleblowing case related to a grievance.
23. Further time would then be spent cross-checking with HR to answer the questions in part 1 of the request on the status of the cases and NHSE considers this is an 'extraction' activity that can be included in the cost estimate.
24. NHSE confirmed its estimate was based on its experience dealing with similar requests where cases/reports have had to be reviewed to determine if they contain relevant information or are in scope of a request. The information contained in case records is not consistent in availability, level or quality so an average time to review is difficult to ascertain from conducting a sampling exercise but NHSE has previously estimated 10 minutes is a reasonable average based on experience of reviewing case records. In fact, NHSE considers 10 minutes per record is a minimum amount of time as FTSU cases are complex and it is not always easy or quick to read them to establish relevance.

### **The Commissioner's view**

25. The Commissioner is satisfied that complying with this request would exceed the appropriate limit. However it is also his view that NHSE's reasoning for this could have been more clearly communicated to the complainant.
26. NHSE has 'aggregated' the requests in this case in line with the [Commissioner's guidance](#). Two or more separate requests can be

aggregated for the purpose of considering the cost limit under section 12. Multiple requests within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the Information Tribunal in the case of [Ian Fitzsimmons v ICO & Department for Culture, Media and Sport \(EA/2007/0124, 17 June 2008\)](#).

27. In this case NHSE has aggregated all of the requests in the single item of correspondence when considering if it would exceed 18 hours to comply. NHSE has focused on the part of the request that is most burdensome. If it can establish that this part exceeds the cost limit it is entitled to refuse the entire request. The Commissioner acknowledges that this focus on one part relating to whistleblowing caused some confusion but this part was used as an example to explain the complications and difficulties in isolating the information that had been requested. NHSE is entitled to consider the cumulative time needed to then go on to ascertain how many grievances were about wages and employment conditions and to then provide the more statistical information requested at part 1 on the case statuses.
28. Accepting that the requests can be aggregated the Commissioner must also be certain that the estimates given by NHSE are reasonable and based on sensible methods of locating and extracting the relevant information. The Commissioner accepts that NHSE case management systems don't have this information stored in the specific way it has been asked for and there would need to be a manual review of case records to ascertain if any grievances were about one of the cited issues or, in the case of whistleblowing concerns, if the FTSU cases were also about grievances. NHSE's estimate of 10 minutes per record has been argued to be conservative but the Commissioner doesn't agree. If anything it is likely that it would take less than 10 minutes to review some of the cases as, by NHSE's own admissions they vary in length and complexity. Some may only need a brief scan to ascertain if they relate an area in scope of the request but there may be outlying cases that are more voluminous.
29. That being said for whistleblowing issues alone there are 450 records to review – even with a much reduced estimate of 5 minutes per record the cost limit is exceeded and this doesn't factor in the time to review grievance cases held by NHSE which may be about factors other than whistleblowing. Nor does it factor in time to cross-reference with HR to get information on case statuses and answer the questions asked in part 1 of the request.
30. As such, the Commissioner finds that the broad scope of the request, the number of potentially in scope search results that would need to be

checked, and the fact that NHSE can aggregate the requests means it is not possible for NHSE to comply with the request within the cost limit.

31. The Commissioner finds therefore that NHS England was entitled to rely on section 12(1) of FOIA to refuse the request.

## **Procedural matters**

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

32. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
33. 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 such that it 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.
34. NHSE did provide advice and assistance, focusing on the part relating to whistleblowing as this was considered the most time consuming and suggesting the time frame could be reduced.
35. The Commissioner is therefore satisfied that NHS England complied with section 16 of FOIA when dealing with this request.

## Right of appeal

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36. 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)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jill Hulley**  
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