

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2025

Public Authority: Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board

Address: Unipart House
Oxford
OX4 2PG

Decision (including any steps ordered)

1. The complainant requested copies of all correspondence between Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board ('BOB ICB') and the Hightown Surgery in Banbury over a twelve month period. BOB ICB sought clarification of the request which the complainant declined to provide. BOB ICB said it may hold some of the requested information but, without clarification, could not provide it on the grounds of cost, citing section 12(1) of FOIA.
2. The Commissioner's decision is that BOB ICB has properly relied on section 12(1) of FOIA for the reasons set out in this notice. He also finds that BOB ICB complied with its advice and assistance obligations in accordance with section 16 of FOIA. However, by failing to provide its substantive response within the statutory 20 working days' timescale, BOB ICB has breached section 10(1) of FOIA.
3. No steps are required as a result of this notice.

Background

4. The complainant submitted an identical request to BOB ICB which has been considered under IC-335345-Q0T0. In that case he asked about correspondence between BOB ICB and the Windrush surgery. Again, section 12 of FOIA was applied. Both notices will be published in due course on the Commissioner's website.

Request and response

5. On 29 July 2024, the complainant wrote to BOB ICB and requested information in the following terms:

“For the past 12 months, please provide copies of all communications and documents exchanged between Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (BOB ICB) and Hightown Surgery, Banbury.”
6. In the absence of BOB ICB’s substantive response within the 20 working days’ time limit proscribed by FOIA, the complainant requested an internal review on 28 August 2024, by way of a reminder that the response was now due.
7. On 3 September 2024, BOB ICB wrote to the complainant advising that it would require additional time to respond to his internal review request. It said this was in accordance with section 10(1) of FOIA (the statutory time for responding to FOIA requests) and in order “to consider the complex nature” of the request. The Commissioner has commented on this matter under ‘Other matters’.
8. The complainant disagreed with BOB ICB’s additional time approach and reiterated his internal review request on 19 September 2024.
9. BOB ICB provided the outcome of its internal review on 26 September 2024. It said it may hold some of the requested information but considered that section 12 applied.
10. BOB ICB also said it had provided section 16 of FOIA advice and assistance by way of offering a meeting in connection to a similar request submitted by the same complainant (see ‘Background’ section) to discuss and clarify that request with him.

Scope of the case

11. The complainant contacted the Commissioner on 1 October 2024 to complain about the way his request for information had been handled. He submitted the following grounds of complaint, which the Commissioner asked BOB ICB to consider as part of its investigation response:

“BOB ICB failed to provide a response within the 20 working days from submission of request and then applied an S[section] 10 exemption due to the “complex nature” of the request, despite the request being straightforward and unambiguous.

BOB ICB then provided both a response to the initial request and internal review on 26 September 2024, upholding S12 exemption.

BOB ICB have provided no details as to why they believe that the time taken to find and collate the requested information would exceed the allowable time. I think it is reasonable to expect that any information exchanged between BOB ICB and Hightown Surgery would be archived in some form of orderly and easily accessible filing system.

In addition to the BOB ICB refusing the request, I feel that their approach to responding to FOIA requests is incredibly unprofessional and deliberately confusing."

12. The Commissioner has considered timeliness and also whether BOB ICB was entitled to rely on section 12 of FOIA and whether it complied with its section 16 of FOIA advice and assistance obligations.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

13. 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.
14. 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.
15. In accordance with the Regulations, the applicable cost limit in this case is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours' work for BOB ICB. This represents the estimated cost of one person spending the equivalent of 2.5 working days locating, retrieving, and extracting the information.

16. 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 BOB ICB was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
17. Although BOB ICB did not specifically request clarification in relation to the Hightown surgery request, the Commissioner notes that both requests were submitted on the same date by the complainant and that the issues arising in the earlier Windrush surgery request are mirrored here.
18. In its submissions to the Commissioner, BOB ICB explained that it does not have a central database of communications to individual practices. Specifically, it said:

"BOB ICB can confirm that without the requested clarification on what answers the applicant is seeking to obtain, the ICB had no alternative but to rely on and apply the Section 12(1) Exemption.

The ICB communicates regularly with Practices in the BOB geography including Hightown Surgery. Our communication route is normally through email or letter or newsletters. Any member of the ICB staff (544) could communicate with Practices at any time on any subject.

Whilst there is [sic] individual team filing systems for letters and newsletters, email correspondence is not filed in a central database.

In order to provide a response to satisfy the level of detail required in the applicant's request each member of BOB ICB staff (544 as of writing) would need to search their files and email records for communications with Hightown Surgery over a one-year period. It would be necessary to search for both a generic Hightown email address as well as the email address for each individual member of staff employed by Hightown Surgery including those that have left in the 12month period."

19. BOB ICB also advised that:

"It is estimated that this would take on average 30 mins per staff member (some staff would have no correspondence others would have some). Following identification of any communication, there would be a need to redact any confidential information and remove duplicates. Any redaction would have to be submitted to the FOI Team where the appropriate GDPR [General Data Protection

Regulation][checks would be carried out and the redaction tool employed. It is estimated that this would take on average 15 minutes per document.

Therefore, the time needed to provide a response would be (544 X 30mins) + (15mins redaction time for each document)."

20. The Commissioner has referred to his section 12 guidance¹ which lists the activities that can and cannot be included in a cost estimate. The guidance clearly states that:

"You also can't take account of the time likely to be taken in removing any information which you decide is exempt (often referred to as 'redacting' the exempt information).

This approach has been confirmed by the Information Tribunal in the case of [The Chief Constable of South Yorkshire Police v the Information Commissioner \(EA/2009/0029, 14 December 2009\)](#) and also by the High Court on appeal ([2011] EWHC44 (Admin))."

21. The Commissioner has therefore excluded the time for redaction from BOB ICB's cost estimate. With 544 staff members requiring an estimated 30 minutes each to check for the requested "correspondence" with Hightown Surgery, this equates to 16,320 minutes or 272 hours' work. This clearly exceeds the 18 hours cost limit proscribed by section 12 of FOIA.
22. BOB ICB confirmed that it had undertaken a sampling exercise of **email communications** [emphasis added] with Hightown Surgery over a three month period in promulgating its cost estimate as follows:

"We used our generic primary care email account which is the account most likely to have been used for generic communications.

This included searching the folder for emails to Hightown Surgery and to 7 individual members of Hightown staff. This resulted in 158 emails although duplicates have not been excluded.

This took one member of ICB staff 2 hrs and 45 minutes to complete. We have not tested the time to remove duplicates or redact any confidential information."

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#estimate>

23. Again, the time for redaction (had it been included as part of the sampling exercise) would need to have been discounted. Section 12 of FOIA does not require public authorities to remove duplicate documents.
24. The Commissioner notes that the sampling exercise covered a three month period and that only emails were checked. He notes that "correspondence" would be likely to also include letters, etcetera.
25. The Commissioner notes that BOB ICB said it took one staff member 165 minutes (2 hours and 45 minutes) to check emails alone. However, the sampling exercise equates to seven members of staff. Considering the sampling exercise with seven people taking 165 minutes to check emails alone, this averages out at just under 24 minutes per officer. Extrapolating this for the cost estimate set out earlier, using 23 minutes per 544 staff members would equate to 12,512 minutes or 208.5 hours' work. Even were the checks to only take 5 minutes per member of staff, as the Commissioner recognises that not all staff will be likely to have corresponded with the surgery, this would still take in excess of 45 hours or work.
26. Having considered the rationale provided, the Commissioner finds that this cost estimate is entirely reasonable. The Commissioner further notes that, even by reducing the time which would be taken, the total time would still significantly exceed the cost limit of 18 hours and £450 proscribed by FOIA.

Conclusion

27. In determining whether BOB ICB has correctly applied section 12 of FOIA in this case, the Commissioner has considered the rationale provided.
28. The complainant's view is set out at paragraph 11 of this notice.
29. The Commissioner accepts that BOB ICB has reasonably estimated that the cost of complying with the unclarified request would exceed the appropriate limit. It follows that the Commissioner finds that section 12(1) has been correctly applied.

Section 16 – advice and assistance

30. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.

31. The Section 45 FOIA Code of Practice (the 'Code')² states that, where a public authority is relying on section 12 to refuse a request, it should help the requester to refine their request within the cost limit.
32. In this case, at internal review, BOB ICB referred to it seeking clarification of the associated Windrush surgery request on 15 August 2024. Specifically, in that related case, it advised the complainant as follows:

"Due to the number and size of the FOI requests BOB ICB has received via www.whatdotheyknow.com in relation to the previous Banbury Moratorium, we would like to understand your concerns more fully to enable us to provide you with the information you are seeking.

Without clarification, we estimate that the time taken for our staff to collect and collate the information you have requested would be in excess of the 18-hour time threshold, and a Section 12 exemption would be applied (Section 12 FOIA exemption that allows public authorities to refuse a request where it is estimated that the cost of complying would exceed a set limit).

We would therefore like to offer you a meeting with the ICB primary care team via MS Teams or Zoom to better understand your request and to clarify the information you are seeking.

Please could you suggest some suitable dates and times that would be convenient for you.

For transparency, we will be putting the FOI request on hold, whilst we await your response."

33. In its submissions to the Commissioner, BOB ICB reiterated that it had clearly advised the applicant that, due to the scope of the request, section 12 of FOIA applied. It referenced that it had highlighted the earlier invitation for the complainant to meet with the Primary Care Team, giving the applicant the opportunity to raise his concerns and ask questions in the associated case, which was refused.
34. BOB ICB told the Commissioner that such a meeting would have provided the opportunity for the applicant to refine his request so that any questions could be answered and correspondence (if any) provided within the appropriate cost limit. It said that at no time, did the

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

applicant put forward a revised request or suggestion on how the ICB may be able to respond in relation to the type of information required; any specific communication or document; any exchanges with any specific person. Without this information or guidance, BOB ICB advised that the request was impossible to fulfil.

35. Having considered the available evidence, the Commissioner is satisfied that BOB ICB offered reasonable advice and assistance. He therefore finds that it complied with its section 16 of FOIA obligations.

Section 10 – time for compliance

36. Section 10(1) requires a public authority to issue its response within 20 working days. In the circumstances of this case, BOB ICB failed to respond to the request within 20 working days and therefore breached section 10(1) of FOIA. The Commissioner has logged this delay.

Other matters

37. The Commissioner notes that the complainant submitted the following comment in his post complaint email of 20 January 2025:

“If the BOB ICB maintains its reliance on the S12 exemption, I request the total number of emails held for the requested period and details of the manner in which communications with specific GP practices are archived.”

38. Should the complainant wish to pursue this matter, he will need to submit a fresh request to BOB ICB.
39. Should the complainant still require the information requested in this notice, the Commissioner would suggest that he either specifies the particular correspondence he is seeking, reduces the timeframe or contacts BOB ICB to clarify his request with a view to bringing it within the section 12 cost limit.
40. The complainant may also find it useful to refer to the Commissioner’s guidance on how to make effective information requests³.

Internal reviews

41. In this case, BOB ICB wrote to the complainant to advise it was extending the time to consider its internal review decision in accordance
-

³ <https://ico.org.uk/for-the-public/official-information/>

with section 10(1) of FOIA (the time for compliance for responding to FOIA requests). The Commissioner would reiterate his advice set out in his investigation letter to BOB ICB:

"Internal reviews are not subject to section 10(1) of FOIA because they are not a statutory requirement. You can extend the timeframe for an internal review in exceptional circumstances (complex and voluminous cases) from 20 to 40 working days but this is outside FOIA.

You cannot extend the time limit for considering a request from 20 to 40 working days unless it is to consider the public interest associated with a qualified exemption. There are some exceptions to this however, so you may find it helpful to review the following guidance from our website:

<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/time-limits-for-compliance-under-the-freedom-of-information-act-section-10/#whatarethe>."

Right of appeal

42. 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

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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