

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2014

Public Authority: North East London NHS Foundation Trust

Address: Goodmayes Hospital
Barley Lane, Ilford Essex IG3 8XJ

Decision (including any steps ordered)

1. The complainant has requested information about Goodmayes Hospital Staff Social Club. North East London NHS Foundation Trust ('the Trust') released some information and said that determining whether any further information was held would exceed the cost limit under section 12(2) of the FOIA.
2. The Commissioner's decision is that:
 - The Trust has breached section 10 of the FOIA (time for compliance) because it took longer than 20 working days to respond to both the complainant's original request, and their revised request.
 - The Trust has correctly applied section 12(2) to the complainant's revised request of 4 September 2013.
3. However, in order to fully comply with its obligations under section 16 (advice and assistance) the Commissioner requires the public authority to consider whether it would be reasonable to provide advice and assistance to the complainant in respect of their revised request.
4. The public authority must take these steps 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 June 2013, the complainant wrote to North East London NHS Foundation Trust and requested information in the following terms:
- (1) *Please send me, the following information, Re. NELFT full disclosure and details of any meetings whether formal or informal at all levels within the Trust to include, Trust board, senior manager/executive board, Estates management meetings, joint staffs negotiations/staff consultation meetings and any meeting with trade union, lay or full time officials, AND WITH BHRT where any discussions and decisions pertaining to Goodmayes Hospital Staff Social Club were taken.*
 - (2) *Please provide copies of any documentation to include, minutes, correspondence, emails, reports of any discussions and decisions regarding Goodmayes Hospital Staff Social Club were taken.*
 - (3) *Copies of all planning applications relating to the redevelopment of the land on the (Goodmayes site)*
 - (4) *I would like a copy of the minutes of the meeting between [Named Person 1], myself, [Named Person 2] (General sec) [Named Person 3] (Chairperson) Godmayes Hospital Staff Social Club on the 30th April 2013 9am, which was held in [Named Person 1's] office.*
6. The Trust responded on 26 July 2013. It said that to provide the complainant with the information they had requested would cost £500 and would therefore exceed the appropriate cost limit of £450 by £50. The complainant said they would be prepared to pay the £50 excess. The Trust advised them on 14 August 2013 that if they were able to narrow the scope of their request, it may be able to provide the information at no cost.
7. On 4 September 2013, the complainant requested the following information:
- (1) *The minutes of any meetings between NELFT management and Trade Unions/staff side reps (lay or full time officials) in the last five years, where there were discussions pertaining to Goodmayes Hospital Staff Social Club.*
 - (2) *I do not accept that the meeting with [Named Person 1] was informal, even if it was not minuted. He imparted information to myself and the Executive committee of the Social Club which would usually be held by the Chief Executive and Director of*

Estates, not by the Inpatient and Acute Services Services Director (surely [Named Person 1] was not acting unilateral) I would therefore the minutes of any formal Trust meetings where the decision not to renew the Social Club lease was discussed, and or when [Named Person 1] was briefed to impart this information to the Social Club.

8. The Trust released some information on 4 October 2013 – the minutes of one particular meeting.
9. The complainant was not satisfied with the Trust's response – in terms of the information it had released and the time it took to release it. They requested an internal review on 4 October 2013 and on 9 October 2013 the Trust advised them to escalate their complaint to its complaints department. It also confirmed at this point that it had provided the complainant with all the relevant information that it held. Following further discussion with the complainant, on 10 October 2013 the Trust then advised the complainant to complain to the Commissioner. It did not carry out an internal review of its response to the complainant's information request.
10. On 11 June 2014, the Commissioner provided the Trust with guidance on the benefits of the FOIA internal review process. The Trust then wrote to the complainant on 1 July 2014. It said that Freedom of Information complaints fall outside the scope of its complaints process and their complaint would therefore not be investigated. It advised that the complainant's request was actioned at the time and re-sent the information that had been provided to them.

Scope of the case

11. The complainant had contacted the Commissioner on 6 June 2014 to complain about the way their request for information had been handled.
12. During the course of the Commissioner's investigation, the Trust confirmed to him that it had provided to the complainant all the relevant information that it held that is readily available. It said that to search for any additional information would exceed the appropriate cost limit of £450 and it is therefore not obliged to fully comply with the request, under section 12 of the FOIA.
13. The Commissioner has focussed his investigation on the Trust's subsequent application of section 12 to the request and its obligations under section 16. He has also considered whether the time it took to respond to the complainant's information requests breached section 10 of the FOIA.

Reasons for decision

14. **Section 1(1)** of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and, (b) if the information is held, to have that information communicated to them.
15. In its initial submission to the Commissioner, the Trust simply confirmed that it had released to the complainant all the information that it held that is relevant to the revised request the complainant submitted on 4 September 2013.
16. As a result of further questioning from the Commissioner, the Trust confirmed that it had released all the information that it held that is easily accessible, and that to identify and release any additional information would exceed the appropriate limit of 18 hours work/£450.
17. **Section 12(1)** of the FOIA removes a public authority's obligation to comply with section 1(1) if it estimates that it would exceed the appropriate limit to comply with the request.
18. **Section 12(2)** says that subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) [ie to inform the applicant whether the public authority holds the requested information] unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
19. In this case the Trust estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
20. The estimate must be reasonable in the circumstances of the case.
21. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request. This equates to 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Trust. If an authority estimates that confirming or denying whether it holds the information may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information

- (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
22. Where a public authority claims that section 12 of the FOIA is engaged, it should, where reasonable, consider its obligations under section 16 of the FOIA and provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit.
 23. The Trust explained that any further information relevant to the complainant's request would have been held by three members of its staff who left the organisation four or five years ago. The information, if it is held, is therefore stored in closed IT accounts.
 24. The Trust explained that prior to two years ago all electronic backup material was stored directly to tape, in bulk. In the interim period, it has upgraded its IT systems. Therefore to search for, and retrieve, data from over two years ago, the Trust would need to restore the entire exchange database, add this to an isolated environment and then restore it. The Trust would need to carry out this process for each of the three email accounts in question.
 25. The Trust provided the Commissioner with an estimated breakdown of the tasks, times and costs associated with identifying and providing any additional information. For one email account, the Trust estimates it would take approximately 21 hours, and put the cost at £500 (21 hours would actually cost £525). The Trust's breakdown is contained in an annex to this notice.
 26. The Trust has also told the Commissioner that this work could take far longer than it has estimated because of the time period involved, the size of any relevant data and storage and resource availability, with the work also having to be carried out by a server engineer.
 27. On the basis of this further explanation, the Commissioner is satisfied that for the Trust to ascertain whether or not any additional information within the scope of the complainant's revised request is held would in itself, exceed the appropriate limit in this case.
 28. **Section 16** of the FOIA places an obligation on a public authority to provide advice and assistance to an applicant.
 29. In regards to the complainant's original request, submitted on 26 June 2013, the Commissioner considers that the Trust clearly met its obligations under section 16 because it had advised the complainant that they could narrow down the scope of the request.

30. This resulted in the complainant's revised request, submitted on 4 September 2013. This was, in effect, a new request to which the section 16 obligations also applied.
31. The Trust is unable to determine whether any further information is held since it considers that to do so would exceed the cost limit under section 12(2) of the FOIA. It is difficult for the Commissioner to see how the request could be refined still further so that related information could be identified within the cost/time limit given the circumstances of the case: the age of any related material, and the fact that relevant staff members left the organisation a number of years ago and that their electronic accounts are closed. Nonetheless, the Trust should now consider whether it would be reasonable to offer additional advice and assistance to the complainant about their revised request. This is a step that might have been identified and taken at the time had the Trust had a specific FOIA internal review process in place.
32. **Section 10** of the FOIA says that a public authority must comply with section 1 within 20 working days following the date it receives a request.
33. The complainant submitted their original request on 26 June 2013. A response was due from the Trust by 25 July and the complainant received it on 26 July. The complainant submitted their revised request on 4 September 2013. As mentioned at paragraph 30, this was in effect a new request and the Trust's response was therefore due on 2 October 2013. It was received on 4 October. The responses to both requests were therefore slightly outside the 20 working day limit.

Other matters

34. In June 2014, the Commissioner suggested the Trust could consider putting in place a separate FOIA internal review process, in line with the Freedom of Information Act section 45 Code of Practice, and the NHS Information Governance Toolkit. Noting the length of time it has taken to resolve this case – nearly 18 months – the Commissioner considers it is likely that the Trust could have managed the information request more efficiently had such a process been in place.

Right of appeal

35. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

36. 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.
37. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX

	Task	Time	Cost
1.	Analysis of when the account was deleted from the system. As the accounts were deleted over 30 days we would need to restore from backup Tape	Estimated at 6 Hours+	£125.00
2.	Backup tapes stored in vault in isolated comms room offsite, these will need to be retrieved from the month required.	Estimated at 2 Hours+	£50.00
3.	Load up the tapes to tape library and inventory and catalogue	Estimated at 3 Hours+	£75.00
4.	Find the relevant servers and restore	Estimated at 4 Hours+	£100.00
5.	Once restored attach to an AD account	Estimated at 2 Hours+	£50.00
6.	Log in as the user and search the mailbox for any trace of emails relating to this matter and any associated folders	Estimated at 4 Hours+	£100.00