

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2021

Public Authority: Doctors Adma, Barnfield, Hall, Kauser,
Kavanagh, Khan, Lloyd, Matta, Mitchell, Morse,
Patel, Thurston and Thwaites
(GPs of the Unsworth Group Practice)

Address: Captain Lees Road
Westhoughton
Bolton
BL5 3UB

Decision (including any steps ordered)

1. The complainant requested data on completed appointments. Unsworth Group Practice ("the Practice") relied on section 12(1) of the FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Practice was entitled to rely on section 12(1) of the FOIA to refuse the request. However, it failed to provide reasonable advice and assistance and therefore breached section 16 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Status of GPs under the FOIA

4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is also a separate public authority. The actual duty under section 1 of the FOIA, to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions, rests with each individual GP.

5. However, the Commissioner acknowledges that when an applicant makes an information request to a medical practice, or a single GP within the practice, it is reasonable to expect, for convenience, that the practice will act as the single point of contact and provide a response on behalf of the GPs concerned.
6. For the purposes of this decision notice, references to the views and actions of "the Practice" should be read as referring to the collective views and actions of the above-named GPs

Request and response

7. On 12 February 2021 the complainant requested information of the following description:

"I am writing to you under the Freedom of Information Act 2000 to request the following information:

"Total number of GP appointments completed (i.e. booked and attended by patient) over the period 1 January 2020 to 31 December 2020, and a breakdown of how these were completed i.e. by telephone, or in person (face-to-face);

"Total number of GP appointments completed (i.e. booked and attended by patient) over the period 1 January 2019 to 31 December 2019, and a breakdown of how these were completed i.e. by telephone, or in person (face-to-face).

"Please provide the information requested in paper (by letter, to my address) and electronic format."

8. On 10 March 2021, the Practice responded. It refused the request and relied on section 12 of the FOIA in order to do so.
9. The complainant requested an internal review on 12 March 2021. The Practice completed an internal review on 18 March 2021. It upheld its original position, but provided a small subset of the data that had been compiled by the CCG.

Scope of the case

10. The complainant contacted the Commissioner on 12 March 2021 to complain about the way his request for information had been handled.
11. The Commissioner considers that the scope of her investigation is to determine whether or not the Practice was entitled to rely on section 12 to refuse the request.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

12. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

13. Section 12 of the FOIA states that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

14. The “Appropriate Limit” is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) and is set at £450 for a public authority such as the Practice. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.
15. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (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.
16. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.¹ 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.

The Practice's position

17. The Practice explained to the Commissioner that it did not record this information in a manner that would make it easily retrievable. Therefore in order to compile the requested information it would be required to conduct a manual review of its records to establish how many appointments had been completed on each day and the format in which the appointment was conducted.
18. According to its contract, the Practice explained, it was required to offer 75 contacts per 1,000 population. In order to confirm compliance with this part of its contract, the Practice would undergo an annual audit from the Care Quality Commission (CQC) in which a random sample of weeks would be analysed and the appointments calculated. The data from the 2021 audit had been provided to the complainant.
19. The Practice noted that it took a two-person CQC team four hours to review a week's worth of data. Based on that estimate, it calculated that it would need around two and a half minutes to review each clinic and extract the relevant data. Given that its staff carried out an average of 25 clinics per day, to compile the data across the 250 working days per year for which clinics were offered would take in excess of 260 hours at

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

a notional cost of over £6,500. That cost would need be multiplied in order to provide the data for more than one year.

The Commissioner's view

20. The Commissioner accepts that Practice has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.
21. The complainant has argued that the Practice ought to hold data on the number of appointments for audit purposes. However, the Practice has explained how the CQC audits this area of its performance and why it is not necessary for it to have the information. Furthermore, the Commissioner notes that the request seeks not just the overall total of appointments, but the format of each appointment too.
22. In order to review 500 working days' worth of data without exceeding the cost limit, the Practice would have just 7 minutes to review each day's data. Considering that the CQC's data indicates that the practice is offering an average of approximately 1400 appointments per week, the Commissioner considers that such a work rate would not be feasible.
23. Therefore, even if the Commissioner were to consider that the Practice's estimate has been exaggerated (and, given that it is based on real world data created by the CQC, that seems unlikely), she does not consider that the estimate could be reduced to the point at which it would fall within the cost limit.
24. The Commissioner is therefore satisfied that the Practice was entitled to rely on section 12 of the FOIA to refuse the request.

Section 16 – advice and assistance

25. Section 16 of the FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
26. The Section 45 FOIA Code of Practice states that, where a public authority is relying on section 12 to refuse a request, it should help the requestor to refine their request within the cost limit.
27. The Practice's refusal notice did not contain any advice and assistance that would have assisted the complainant in making a fresh request – although he was offered a telephone call.
28. In its internal review, the Practice did explain the process by which the CQC carries out audits. It also repeated its offer of a telephone call.

29. Having considered the available evidence, the Commissioner is not satisfied that the Practice offered reasonable advice and assistance to help the complainant refine his request – such as reducing the scope of his request to a shorter span of time. It is not clear what the Practice would have provided to the complainant in a phone call and, in any case, it should have been obvious by the time of the internal review that that the complainant did not wish to take up the option of a phone call – this is not something that should be held against him.
30. Therefore the Commissioner considers that the Practice failed to comply with section 16 of the FOIA.
31. Having found a breach, the Commissioner next considered whether to order steps to remedy the breach. She considered that it would not be proportionate. The analysis in this decision notice should be sufficient to assist the complainant in refining his request such that it would fall within the cost limit.

Right of appeal

32. 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

33. 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.
34. 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
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