

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 June 2014

**Public Authority:** Belfast Health & Social Care Trust

**Address:** Trust Headquarters  
A Floor  
Belfast City Hospital  
Lisburn Road  
Belfast  
BT9 7AB

#### Decision (including any steps ordered)

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1. The complainant has made a number of requests to Belfast Health & Social Care Trust (the Trust) for information relating to a project regarding design and construction at two hospitals in Belfast. The Trust responded by claiming that it was not under a duty to comply with the requests because the cost of doing so when aggregated together would exceed the appropriate limit for the purposes of section 12(1) of FOIA. The Commissioner's decision is that section 12(1) of FOIA has not been shown to apply. However, he does not require the Trust to take any steps as a result of this notice as the complainant has confirmed he no longer requires the Trust to provide this information.

#### Request and response

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2. On 16 July 2013 the complainant wrote to the Trust and requested information in the following terms:
  - 6762 – 'Please provide copies of email correspondence received or sent by the Trust since July 30<sup>th</sup> 2012 in which the terms 'Bladeroom

- 6768 – ‘Please provide the names of those contractors and sub-contractors invited to tender for the design and construction of the new data centre i.e. the facility being built at Belfast City Hospital (site in front of the Telephone exchange building) that is the subject of planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) and described therein as “a centralized IT server Hub Room for the Belfast City Hospital with a fibre link between this building and RVH”.’
  - 6769 – This request was identical to 6768 except that it asked for ‘copies of drawings and tender documents provided to the contractors/sub-contractors.’
3. In relation to request 6762, the Trust wrote to the complainant on 5 August 2013 and informed him that that it had identified 1257 relevant emails. To help ensure that any disclosable information could be provided in a reasonable timeframe and to protect against the carrying out of unnecessary work, the Trust invited the complainant to narrow his request.
4. Acting on this advice, the complainant contacted the Trust the following day with a narrowed version of his request:
- ‘Please provide copies of email correspondence received or sent by the Trust since August 30<sup>th</sup> 2012 in which the term ‘BladeRoom’ ‘Blade Room’ or ‘Bladeroom’ is used, other than where the email only relates to the BladeRoom data centre installed at Royal Victoria Hospital.’
5. On 7 August 2013 the Trust wrote to the complainant again, thanking him for narrowing the request and noting that the Trust had been able to reduce quite significantly the number of emails that needed to be considered. Nevertheless, it suggested a way in which the request could be narrowed still further. The complainant agreed to this further revision and the final request was framed as follows:
- ‘Please provide copies of email correspondence received or sent by the Trust since August 30<sup>th</sup> 2012 in which the term ‘BladeRoom’ ‘Blade Room’ or ‘Bladeroom’ is used other than where the email relates only to the BladeRoom data centre installed at Royal Victoria Hospital and excluding emails that solely relate to configuring the external data connections to the building and to exclude information on data switches.’
6. The Trust corresponded with the complainant again on 13 August 2013 and informed him that that it required more time in which to examine

and quality assure its response to the request. The Trust asked the complainant whether he would be agreeable to a two week extension. The complainant was not satisfied with this and notified the Trust of his concerns.

7. On 14 August 2014 the Trust provided identical responses to requests 6768 and 6769. These stated that the 'works were not procured via traditional open tendering. They were procured using the existing GPS (Government Procurement Services) framework Contract and Measured Term Framework.' The complainant contacted the Trust the same day and expressed his dissatisfaction with the information provided in relation to 6768 and 6769, considering that these were not the details he had asked for.
8. The Trust wrote to the complainant on 27 August 2014 and confirmed that it would not be processing further the complainant's request for copies of email correspondence in connection with the Blade Room. The Trust explained that it did not have a duty to do so because the aggregated costs of complying with the six requests made by the complainant on 6 July 2013 – which included 6762, 6768 and 6769 – would exceed the appropriate limit for the purposes of section 12(1) of FOIA.
9. The Trust followed this up by issuing on 11 September 2013 a further letter to the complainant with regard to its decision to aggregate his requests. The Trust reiterated that the six requests of 16 July 2013 were subject to section 12(1) of FOIA on the basis of the overall estimate cost of compliance. However, the Trust also advised that three requests received on 14 August 2013 from a third party would also be included as part of the aggregated cost estimate because it considered that the complainant and the third party were acting in concert. In reference to FOIA's section 16 requirement for a public authority to provide advice and assistance, the Trust informed the complainant that he may wish to consider abandoning some of the requests he had made as a way of restricting the cost of compliance.
10. The Trust subsequently carried out an internal review into its handling of the request, having been notified of the complainant's dissatisfaction with its response. The outcome of the review was provided to the complainant on 17 September 2013 and found that section 12(1) of FOIA had been correctly applied.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 17 September 2013 to complain about the way his request for information had been handled.

The complainant made it clear that the scope of his concerns related to the three main requests referred to above, namely 6762, 6768 and 6769. Consequently, while the application of section 12(1) in this case necessarily involves the consideration of other requests in the context of the Trust's cost-estimate, the Commissioner's ultimate determination only concerns these three requests.

12. The complainant has also informed the Commissioner that subsequent to the complaint being made he has been able to obtain copies of the requested information by other means. The complainant has therefore confirmed that he no longer requires the Trust to provide any information captured by the requests that was previously outstanding. However, he has asked the Commissioner to consider whether the Trust properly applied section 12(1) of FOIA at the time the requests were made.

## Reasons for decision

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### Section 12 – appropriate limit

13. Section 12(1) provides that a public authority is not obliged to comply with a request for information where the authority estimates the cost of doing so would exceed the appropriate limit. This limit is not specified in FOIA itself but is instead specified in the accompanying Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).
14. The Fees Regulations state that an estimate can only take into account the costs a public authority reasonably expects to incur in: determining whether it holds the requested information; locating the information; retrieving the information; and extracting the information. The Fees Regulations further clarify that the costs associated with these activities should be worked out a standard rate of £25 per hour per person.
15. The appropriate limit has been set at £600 for central government departments, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Trust. This is equivalent to 18 hours work.

### Aggregation

16. Section 12(4) of FOIA states that in certain cases it is permissible for a public authority to aggregate the costs of complying with two or more requests. Section 5 of the Fees Regulations sets out the conditions in respect of which aggregation may be considered; stating that two or more requests can be aggregated where:

- a) they are made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
  - b) they are for the same or similar information to any extent; and
  - c) the subsequent request is received by the public authority within 60 working days of the previous request.
17. The Trust does not consider that complying with any of the requests in isolation would exceed the appropriate limit in its own right. However, it has argued that the overall effect of complying with the requests would do so. The Commissioner must therefore firstly establish whether the Trust was entitled to aggregate the requests for the purposes of the cost estimate.
18. The Commissioner accepts that five out of the six requests made by the complainant which have been aggregated clearly satisfy the three conditions, a) to c), listed above in that they were; made by one person (the complainant), broadly on the same theme (a development at Belfast City Hospital), and received by the Trust within 60 working days of the previous request. However, the Commissioner considers that more detailed analysis is required in respect of request 6762 and the requests included as part of the aggregation that were submitted by a third party. These items are addressed in turn below.
19. Regarding 6762, the Trust's original calculation of the cost of compliance was based on the original wording of the request rather than the narrowed version that was agreed on 7 August 2013 (which will be referred to as 6762A from this point forward). In contrast, the complainant has argued that 6762 was effectively superseded by 6762A and so it is the later request that should be considered by the Trust. The Commissioner agrees with the complainant's analysis.
20. In response to the Commissioner's queries about the estimated cost estimate, the Trust has confirmed that its section 12 application did use the original request although it considers that the appropriate limit would be exceeded regardless of which version of 6762 (ie 6762 or 6762A) was adopted. It has further advised that it is not normal practice to open a new file for a narrowed request as it is deemed to be a continuation of the initial request.
21. The Commissioner understands that for administrative purposes it may not make sense for a public authority to separate a clarified request from the request that was originally submitted. However, it is important that a public authority does not lose sight of the fact that a refined request becomes a new request for the purposes of the legislation. This

means that the statutory time for compliance commences on the date of the receipt of the new request. Furthermore, the reason for making a narrowed request is to reduce the cost of compliance. Consequently, identifying which version of a request should be considered may have a significant effect on whether the aggregated cost of compliance would exceed the appropriate limit.

22. In this case the Trust's letter informing the complainant of its decision to aggregate his requests was only made after the narrowed version of 6762 had been agreed. The Commissioner therefore agrees with the complainant that 6762 had effectively been replaced by 6762A at that time. In the Commissioner's view, this means it would therefore be unfair to the complainant for the Trust to include 6762 instead of 6762A when aggregating the requests. To find otherwise would potentially frustrate the purpose behind section 16, in respect of which a public authority may encourage an applicant to narrow a request where section 12 has been applied.
23. The Commissioner now turns to the question of whether the Trust was entitled to include as part of its aggregated cost estimate the time taken to comply with the three requests made by a third party (known as 'A' for ease of reference). As referred to above, the Fees Regulations allow that a public authority may aggregate requests for the purposes of a cost estimate where different persons appear to be *acting in concert* or *in pursuance of a campaign*. It is recognised that establishing a link between persons making requests for information may not necessarily be a straightforward process. The fact that requests share a common theme is not in itself proof that the applicants are acting together.
24. In this case the Commissioner has found that it was reasonable for the Trust to conclude that the complainant and A were acting in concert. In coming to this view, the Commissioner considers important the fact that the complainant and A were joint plaintiffs to a claim against the Trust; a dispute that the Trust was actively engaged in at the time of the requests. This would lend significant weight to the claim that the requests were connected. The Commissioner also notes that the complainant does not appear to challenge the justification for the aggregation as part of his arguments against the application of section 12(1) of FOIA.
25. For these reasons, the Commissioner has decided that the condition listed at a) above is met. Furthermore, he considers that A's requests satisfied condition b) in that they are on a similar theme to those of the

complainant. However, the Commissioner has also found that the three requests fall outside of the aggregation window described in condition c). As such, the Trust would not be entitled to aggregate the requests in this situation.

26. With regard to the time period referred to at c), the Commissioner acknowledges at paragraph 48 of his published guidance on section 12<sup>1</sup> of FOIA that there is an apparent tension between the 60 working day period specified and a public authority's duty under section 10(1) of FOIA to respond to a request within 20 working days. The Commissioner's approach to reconciling these factors is set out in the following paragraphs of the guidance:

*49. The Commissioner's approach is to allow the aggregation period to only run up to 20 days 'forward' from the date of any single request under consideration to take into account the requirements of section 10(1).*

*50. The aggregation period will however be able to run up to 60 days 'backward' from the date of any single request under consideration.*

*51. The total aggregation period, (running either forwards or backwards or a combination of both) from the date of any single request must not exceed 60 working days.*

27. Requests 6768 and 6769 were made on 16 July 2013. These had not been resolved to the complainant's satisfaction when the Trust informed him on 27 August 2014 that it had included the time for complying with the requests as part of the aggregated total under section 12(1) (although the Trust did continue to correspond separately with the complainant on these issues). In accordance with the approach outlined above, the Commissioner considers that only requests made within the 20 working day period following this date were eligible to be aggregated. A's requests were only received by the Trust on the twenty-first working day, which means that they could not be considered together. This finding would be different if the Commissioner was considering the Trust's response to A's requests and not the complainant's.

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<sup>1</sup>[http://ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.pdf)



28. The consequence of this is that, when deciding whether section 12(1) was engaged in respect of the complainant's requests, the Commissioner has not included the estimated time factored in for dealing with the three requests made by A. Furthermore, the Commissioner considers that request 6762A was the proper request to be considered as part of the cost-estimate.

### **The cost-estimate**

29. To support the application of section 12(1) of FOIA a public authority is only required to provide an estimate rather than a precise calculation. The test that must therefore be applied is whether an estimate is sensible, realistic and supported by cogent evidence. Critically, the Fees Regulations state that only certain types of activities may be included as part of a public authority's cost-estimate – namely, determining whether information is held, locating the information, retrieving the information and extracting the information.
30. The Trust has estimated that the time for complying with the complainant's requests (calculated using 6762 rather than 6762A) would come to 22 hours. The Trust provided the following evidence to support this position.

### **FOI 6762 – Estimated time 11 hours**

(Originally estimated as 12 hours but upon revisiting this request we would consider 11 hours to be more accurate.)

The estimate for FOI 6762 was estimated on the initial request.

#### Request summary

"Please provide copies of email correspondence received or sent by the Trust since July 30 2012 in which the term 'BladeRoom' 'Blade Room' or 'Bladeroom' is used."

#### Detail of time required

Determining whether information is held, retrieving the information or documents which may contain the information and extracting the information: (IT) Information Technology Department – 9 hrs, Estates Department– 2 hrs. This involved searches of hard-copy files and digital data, downloading archived data, removal of older information not related to this period and copying / compiling information to be shared.

### **FOI 6767 – estimated time 1 hour**

#### Request summary



Please provide the names of the external consultants advising the Trust on the design and construction of the new data centre i.e. the facility being built at Belfast City Hospital, 51 Lisburn Road (site in front of Telephone exchange building) that is the subject of a planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) and described therein as "a centralized IT server Hub Room for the Belfast City Hospital with a fibre link between the building and RVH".

Detail of time required

Retrieving the information or documents which may contain the information and extracting the information: Estates Dept – 1 hr.  
Searching hard-copy files for full details then copying / compiling to be shared.

**FOI 6768 – Estimated time 2 hours**

Request summary

Please provide the names of those contractors and sub-contractors invited to tender for the design and construction of the new data centre i.e. the facility being built at Belfast City Hospital, 51 Lisburn Road (site in front of Telephone exchange building) that is the subject of a planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) and described therein as "a centralized IT server Hub Room for the Belfast City Hospital with a fibre link between this building and RVH".

Detail of time required

Locating and retrieving the information or documents which may contain the information and extracting the information: Estates Dept – 2 hrs.  
Searching hard-copy files for full details then copying / compiling to be shared.

**FOI 6769 – Estimated time 2 hours**

Request summary

Please provide copies of drawings and tender documents provided to contractors and sub-contractors tendering for the design and construction of the new data centre i.e. the facility being built at Belfast City Hospital, 51 Lisburn Road (site in front of Telephone exchange building) that is the subject of a planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) and described therein as "a centralized IT server Hub Room for the Belfast City Hospital with a fibre link between this building and RVH".

Detail of time required

Locating and retrieving the information or documents which may contain the information and extracting the information: Estates Dept – 2 hrs. Contacting and liaising with the design team and searching hard-copy files for full details then copying / compiling to be shared.

**FOI 6770 – Estimated time 2 hours**

Request summary

Please provide a copy of any advice received by the Trust that the design of the facility being built at Belfast City Hospital, 51 Lisburn Road (site in front of Telephone exchange building) that is the subject of a planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) and described therein as “a centralized IT server Hub Room for the Belfast City Hospital with a fibre link between this building and RVH” did not breach UK patent number 2467808B

Detail of time required

Determining whether information is held, locating and retrieving the information or documents which may contain the information and extracting the information: Estates Dept – 2 hrs. Contacting and liaising with the design team and searching hard-copy files for full details then copying / compiling to be shared.

**FOI 6771 – Estimated time 4 hours**

Request summary

Please provide copies of the minutes of any meetings where the new data centre being built at Belfast City Hospital, 51 Lisburn Road that is the subject of a planning application dated 20<sup>th</sup> December 2012 (ref Z/2012/1439/F) was discussed).

Detail of time required

Determining whether information is held, locating and retrieving the information or documents which may contain the information and extracting the information: Estates Dept – 4 hrs. Contacting and liaising with the design team and searching hard-copy files for full details then copying / compiling to be shared.

31. The Commissioner considers that some weight should always be attached to the reliability of a public authority's cost-estimate on the basis that it should be in the best position to judge the ease by which information can be recovered from its own records management

systems. Yet, as mentioned above, the Commissioner will test whether section 12 has been properly applied by considering if a public authority has demonstrated that the application was reasonable in the circumstances.

32. From an analysis of the Trust's explanations referred to above, the Commissioner considered there was room for disputing the overall accuracy of the Trust's explanation. This was based on a number of issues that the Commissioner felt had not been adequately addressed by the Trust. He therefore returned to the Trust for further clarification. The issues are summarised below, along with the Trust's response (italicised):

- The observation that half of the cost-estimate (11 hours) was attributed to complying with request 6762. For the reasons stated, the Commissioner considers that the request that should have properly been considered was 6762A and not 6762. As this was designed to be a narrower request than 6762 it might reasonably be expected that compliance would take less time.

*The Trust opted not to re-calculate its estimate based on 6762A. However, it considers that the inclusion of 6762A would still have supported the aggregation.*

- Regarding 6762, the Commissioner asked for more information on the following items:
  - The Trust's reference to searching hard-copy files when the request only mentioned email correspondence.

*The Trust explained that emails are often printed and hard copies added to a project file, so these files would also be included in the search.*

- An explanation of the process that controls when electronic communications are archived and the circumstances in which records would be kept on a 'live' file.

*The Trust uses Microsoft Exchange, which manages email correspondence and archives all emails sent and received. The archive is separate from the live environment, which means that an email will still be held in the archive even where a user deletes it from their live mailbox. All requests processed under FOIA are run against the archive and not the live environment.*

- The possibility that information relating to a tender proposal would be kept in the same file/area.

*Information relating to tender proposals would be held in both digital and hard copy format. These may be stored on central servers, local computer hard drives and hard copy project files.*

- The search capabilities attached to the Trust's electronic management system.

*The Trust has advised that emails for a FOI request can be placed in a folder and further filters can be applied to narrow the search. The archive can be searched by term names, looking for specific words or phrases within the subject body or an attachment of an email. The archive can be searched for mails sent or received by the Trust within a specified date range.*

- It was noted that the Trust had allocated a total of nine hours to complying with requests 6767, 6768, 6769 and 6771. The Commissioner was provided with evidence that indicated the process of compiling the information involved contacting a firm of architects for the information. On the presumption that the architects would likely have held the information in a readily accessible file, and given that 6767 and 6768 only covered a limited amount of information, the Commissioner asked for further information to support the estimate.

*The Trust responded by stating that the time included searching files held by estate services and liaising with the architects to search their files including digital, hard copy or archived material.*

33. In determining whether section 12(1) of FOIA has been shown to be engaged, the Commissioner has had regard to the fact that the Trust's estimate envisages that the aggregated cost of compliance would only exceed the appropriate limit by a relatively small amount (4 hours). This has necessitated a closer look at the exact figures presented to the Commissioner by the Trust.
34. The Commissioner has a number of reservations about the cogency of the Trust's estimate. In particular, he finds that the Trust has failed to demonstrate that compliance with the requests would for the greater part be anything other than straightforward.
35. Firstly, in the absence of conflicting evidence provided by the Trust, the Commissioner considers there are reasonable grounds for assuming that the costs of complying with 6762A would be less than the 11 hours

attributed to 6762. This is supported by the Trust's admission to the complainant that the clarified request helped the Trust remove a significant number of 'irrelevant' emails. Secondly, in respect of 6762A, the Trust has failed to account for the need to inspect hard-copy files given its explanation that all email correspondence is archived. Thirdly, the Commissioner considers that the Trust has failed to justify the allocation of nine hours to requests 6767, 6768, 6769 and 6771. In this regard, it is noteworthy that all of the requested information was apparently held by the architects contacted by the request and that, from the copy of the email correspondence provided, there is no indication the recovery of the information was problematic or time-consuming. This would seem to be evidenced by the efficient way that the request for information was turned around by the architects.

36. For these reasons, the Commissioner has decided there is a sufficient level of doubt to find that the appropriate limit would not be exceeded in complying with the requests. Specifically, he does not consider it would take over 18 hours for a well-informed official to locate, retrieve and/or extract the information which is the subject of the requests. As such, the Commissioner has determined that the Trust was not entitled to rely on section 12(1) of FOIA in the circumstances of the case.

## Right of appeal

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37. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
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**Water Lane**  
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