

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2014

Public Authority: Southern Health NHS Foundation Trust
Address: Tatchbury Mount
6 Sterne Road
Calmore
Hampshire
SO40 2RZ

Decision (including any steps ordered)

1. The complainant made a number of requests for information to Southern Health NHS Foundation Trust ("the Trust") for information related to the Trust's workforce and in particular its disciplinary processes. The Trust responded to some of the requests but for the majority of the requests it applied section 12(1) because it estimated that the cost of complying with the requests would exceed the appropriate limit.
2. The Commissioner's decision is that section 12(1) was applied correctly and that the Trust also provided appropriate advice and assistance in accordance with section 16 of FOIA. The Commissioner requires no steps to be taken.

Request and response

3. On 23 August 2013 the complainant submitted a freedom of information request to the Trust which asked for detailed information on the Trust's workforce and its disciplinary processes in the form of a 17 part questionnaire. The questionnaire is included as an appendix to this notice.
4. The Trust responded to the requests on 23 August 2013 when it said that the cost of complying with the request would exceed the appropriate limit and therefore the request was refused under section 12(1) of FOIA.

5. The complainant subsequently asked the Trust to carry out an internal review of its handling of the request and it presented its findings on 3 October 2013. It now said that 3 of the questions should have been dealt with separately as they were different to the majority of questions which asked for information regarding the Trust's disciplinary processes. The Trust therefore disclosed the information it held in response to the first question – the number of staff employed. For the final two questions it said that it did not hold the requested information on the number of staff committing or attempting suicide. For the remaining 14 questions the Trust confirmed that it was applying section 12(1) of FOIA as it considered that the costs of complying with the requests, when aggregated, would exceed the appropriate limit of £450.

Scope of the case

6. On 22 November 2013 the Commissioner received from the complainant a complaint about the way his request for information had been handled. The Commissioner confirmed that the scope of his investigation would be to consider whether the Trust is entitled to rely on section 12(1) as a basis for refusing to provide the information in response to the 14 questions regarding the Trust's disciplinary processes.
7. The Commissioner has also considered whether the Trust has complied with its duty to provide advice and assistance in accordance with section 16 of FOIA.

Reasons for decision

Section 12 – Appropriate limit

8. Section 12 of FOIA allows a public authority to refuse a request if it estimates that the cost of complying with it would exceed the appropriate limit, which is set at £450 for public authorities outside of central government. The costs that a public authority may take into account when producing its estimate are set out in the Freedom of Information and Data Protection (Appropriate Limit and fees) Regulations 2004 or "the fees regulations".
9. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs 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.
10. A public authority should calculate any staff time spent on the permitted activities at the flat rate of £25 per person, per hour.
 11. Under FOIA a public authority is also allowed to aggregate the costs of complying with requests where they relate "to any extent to the same or similar information" and are made by the same person or by different persons who appear to be acting in concert. In this case all of the complainant's requests relate to the Trust's disciplinary processes and the Commissioner is satisfied that they are sufficiently similar that the Trust is entitled to aggregate the costs of complying with the requests for the purposes of section 12(1). The effect of this is that the Trust would be entitled to refuse to respond to all of the questions if the cost of complying with just one of the questions, or a combination, would exceed the appropriate limit.
 12. The Trust has explained to the Commissioner that the information it holds relating to disciplinary processes does not allow for easy extraction so as to answer the questions the complainant has asked. It said that the only way to answer the questions would be to conduct a manual trawl of the individual paper files belonging to staff. As well as the staff time involved there would also be costs associated with retrieving the files from storage – although the Trust estimates that the staff costs alone would well exceed the appropriate limit.
 13. The Trust explained that, depending on the individual circumstances of the case, when a file is closed it is subsequently archived. This could either be at the point immediately after the disciplinary process has concluded or when the employee has left the Trust. In order to respond to the request, all records from the time period in question which were archived would have had to be retrieved from the Trust's commercial archive store and there would have been a cost attached to this. The archive boxes not only contain HR records of staff who have been subject to a disciplinary process who have left the trust but also those who have left the Trust for other reasons. Therefore the files the Trust would have had to manually review to respond to the request would have been in numerous different boxes. The Trust has informed the Commissioner that when it retrieves a file from archive, it has to recall the whole box. The Trust has confirmed that, having checked its records, there are a total of 141 boxes of casework files archived and specific files could be located within any or all of these 141 boxes. It

costs £25 to retrieve a box so the overall cost of getting this information back from its storage facility would well exceed the appropriate limit.

14. Notwithstanding this, once the boxes have been recovered the relevant files would then need to be identified. The contents of each box would have to be reviewed in order to extract the information. Once the Disciplinary files had been identified, the Trust would need to review each page of what it says are sometimes large files and which include individual hearing notes, outcomes of the hearing notes, appeals against sanction and the outcomes of the appeal(s). The Trust has said that it does not know exactly how many files of this type would have been located but it estimates that it would take at least an hour to review each file and extract the information. The Trust estimates there is an average of 85 disciplinary cases per year (this is based on a total of 425 new disciplinary cases in the five year period from 2009 to 2013), and therefore the time taken to review the files would well exceed the appropriate limit of £450 (or 18 hours based on £25 per hour as explained above).
15. The Commissioner has considered the explanation provided by the Trust and is satisfied that the cost of complying with the complainant's requests would be considerable. It is apparent that the level of information which the complainant requires cannot be easily recovered and would involve retrieving a large number of archived files at considerable cost. Whilst the Trust has not provided an actual figure of the cost it would expect to incur in complying with the request, it is noted that this is not necessary to engage section 12(1) and in this case the Commissioner accepts that this is not possible due to the fact that the Trust cannot be exactly sure how many disciplinary files it would need to review. In any event, given that the complainant has asked for historical information over a 7 year period the Commissioner accepts that the costs involved would safely exceed the appropriate limit. The Commissioner is satisfied that the Trust's estimates of its costs are reasonable and that only relevant costs have been taken into account. For these reasons the Commissioner finds that the Trust was correct to rely on section 12(1) of the Act.

Section 16 – Advice and assistance

16. Section 16 of FOIA provides that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
17. Under section 16(2) a public authority is considered to have met that duty if it follows the section 45 code of practice. The section 45 code of

practice is guidance, produced by the Secretary of State, on how public authorities should deal with information requests. It includes what is expected from a public authority in terms of advice and assistance when a request is refused under section 12.

18. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

19. The Commissioner notes that in its response to the request the Trust provided the following advice to the complainant.

"If the scope of your request for information is narrowed then the Trust may be able to provide the information because it would take less time to compile and collate the relevant information and within the appropriate limits. Having said this, I cannot guarantee that this will be the case. Any reformulated request received will be treated as a fresh Freedom of Information request."

20. The Commissioner is satisfied that in the circumstances of this case the Trust has complied with section 16 of FOIA by advising the complainant to narrow the scope of his request.

Right of appeal

21. 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

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

22. 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.
23. 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

Appendix – The request

The complainant submitted the following requests to the Trust in the form of a questionnaire. The complainant asked that the Trust provide the following information for each year from 2007 to 2013 and that with the exception of requests 16 and 17, the numbers of staff be broken down between 'doctors', 'nurses' and 'others'.

- 1) Total number of staff employed in Trust
- 2) No. of disciplinary cases commenced
- 3) Number of staff suspended
- 4) Working Days Missed through Suspension
- 5) Total Annual Salary Cost of Suspended Staff
- 6) No. of Disciplinary Hearings
- 7) No. of Staff put on Restricted Duties at some point during time period
- 8) No. of Written Warnings issued (excluding final written warnings)
- 9) No. of Final Written Warnings issued
- 10) No. of Dismissals
- 11) No. of Appeal Hearings held
- 12) No. of Appeal Hearings where Appellants won the appeal
- 13) No. of Referrals to Professional Body (eg GMC. NMC)
- 14) No. of Hours spent on Investigations Disciplinary Hearings and Appeals
- 15) Total Cost of Investigations Disciplinary Hearings & Appeals £000:
- 16) No. of Staff Attempting Suicide
- 17) No. of Staff Who Committed Suicide