

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 10 September 2021

**Public Authority:** University Hospitals Plymouth NHS Trust  
**Address:** Derriford Hospital  
Derriford Road  
Plymouth  
PL6 8DH

**Decision (including any steps ordered)**

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1. The complainant has requested details of scans for fungal and pleural lung infections undertaken by University Hospitals Plymouth NHS Trust ("the Trust") over a specified time period. The Trust refused to comply with the request under section 12 of the FOIA (cost of compliance).
2. The Commissioner's decision is that the Trust was entitled to apply section 12, and that it has complied with the requirement of section 16.

**Request and response**

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3. On 29 June 2020 the complainant made a request to the Trust in the following terms:

*"...monthly details of all CTPA scans for fungal and pleural lung infection for the period Jan 2014 to May 2020 for the local area specific to Plymouth."*

4. The Trust responded on 6 August 2020 stating that the request could not be complied with inside the appropriate limit of 18 hours. It explained that it undertook 145 scans per week and each would need to be manually checked to respond. The Trust provided the total number of CTPA scans for all reasons.

5. On 6 August 2020 the complainant expressed dissatisfaction with the advice and assistance provided and on 8 August 2020 the complainant requested an internal review of the decision.
6. The internal review outcome was provided on 24 August 2020 and upheld the response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 25 August 2020 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if the Trust has correctly refused the request on the basis of section 12 of the FOIA.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

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

*"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."*

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>1</sup> ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
11. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:
  - determining whether the information is held;

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<sup>1</sup> [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2004/1356000000000001/1)

- 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.
12. The Trust has explained that it currently records patients' healthcare in paper case notes and on a number of different electronic systems. Scan requests are recorded on one system which is an electronic system for the patient administration of imaging. Scans are coded i.e. selected from a drop down field. This means that reports on types and numbers of scans can be extracted.
  13. However, the Trust advises that the clinical history that is recorded on this system for each scan request is free text and cannot be reported in the same way. This clinical history is not the diagnosis but the presenting symptoms that prompted the request for a scan.
  14. The Trust also has another electronic system – this is a patient administration system for recording inpatient and outpatient activity. Diagnosis on this system is coded and recorded electronically for inpatients only. Outpatients that may be sent for a scan will not have a diagnosis recorded on this system. The Trust has stressed that both of these systems are separate electronic systems.
  15. The Trust has explained that in considering if it was able to respond to the request within the cost limit it liaised with analysts at the Trust who are experts in interrogating the Trust's main electronic systems to produce reports with facts and figures.
  16. The advice given was that it was not possible to filter CTPA scans by diagnosis. This is because scans are recorded as reportable codes on the electronic system and although there is a free text clinical history for presenting symptoms on this system there is no link to the coded diagnosis on the other system which is separate.
  17. The Trust explained that in order to produce a report to respond to the request it would require a manual check of each CTPA scan recorded on its main system and this would involve a member of staff to use a report of CTPA scans and log on to the system and read the clinical history, log on to the administrative system to assess if there was a corresponding inpatient administration with diagnosis and possibly reference the paper notes to analyse whether it may be in the scope of the question. The Trust has estimated this would take a member of staff with the appropriate knowledge approximately 30 minutes per case.
  18. The Trust has explained it undertakes an average of 145 scans per week for all purposes. The time period the request covered was approximately

six years and the Trust estimated there were 300,000 records to check that covered this period.

19. The Commissioner has considered the Trust's submissions and recognises that there were a significant number of scans that were undertaken by the Trust in the time period requested. Based on the explanations provided by the Trust about the way its electronic systems store and record data the Commissioner accepts there would have to be some manual intervention to extract the requested information. It seems clear from the explanations given that the information cannot easily be extracted as the information is not referenced in a way that allows the information to be easily retrieved.
20. The Trust has provided the estimated total time and cost that it considers compliance with the request would take. Although the Commissioner has noted the estimates that the Trust has provided, it is recognised that these are not based on a sampling exercise.
21. However, and notwithstanding this, it is evident that compliance with the request would require the manual review of a huge volume of scan records. The Commissioner notes that in the refusal notice the Trust had estimated 20 minutes per record but has since amended this to 30 minutes per record. Even taking the lower estimate of 20 minutes to locate and extract information from the scan records this would exceed the cost estimate considerably. The Commissioner considers the lower estimate to be more reasonable, the need to manually check data across both electronic systems will clearly take some time and there is a degree of technical knowledge required. She does consider this may still be a slightly inflated estimate and it is possible it would take less time per record once a member of staff was actually involved in the exercise and in full flow.
22. Nevertheless, it is also true that even if this estimate reduced to as low as one minute per record, given the volumes concerned the estimate would be in excess of the limit.
23. The Commissioner therefore finds it highly plausible that compliance with the request would significantly exceed 18 hours.
24. On this basis, the Commissioner is satisfied that the Trust has estimated reasonably that compliance with the request would exceed the appropriate limit, and that section 12 therefore applies. The Trust was not, therefore, obliged to comply with the complainant's request.

### **Section 16(1) – Duty to provide advice and assistance**

25. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request.

Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice<sup>2</sup> ("the Code") issued by the Secretary of State, it will have complied with section 16(1).

26. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
27. The Commissioner's guidance<sup>3</sup> states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
28. In this case, the Trust has informed the Commissioner that it considers it complied with section 16. Once the Trust ascertained it was unable to produce a report on scans for this condition and would need to manually review records, the clinicians at the Trust determined they were able to provide a report of scans over a ten year period. This report provided the total number of CTPA scans for all reasons over this period.
29. Having considered the information sought by the request and particularly the form in which it is held, the Commissioner recognises that any advice and assistance which the Trust could provide to refine the request is limited by the huge number of scans undertaken each week. The Trust have stated this is approximately 145 scans a week. Even if it took only one minute per scan to locate and extract information the Trust would still only be able to provide information for a roughly seven week period before exceeding the cost limit.
30. The Commissioner therefore accepts that the Trust has provided the most reasonable advice and assistance that it is able to - through the disclosure of the information on total CTPA scans.

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<sup>2</sup> [Freedom of Information Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>3</sup> [costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf \(ico.org.uk\)](http://ico.org.uk)

31. Having considered the above, the Commissioner finds that the Trust has complied with section 16.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

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

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**