

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2023

Public Authority: Health Care First Partnership (HCFP)

Address: Pinfold Lane
Methley
Leeds
LS26 9AA

Decision (including any steps ordered)

1. The complainant has requested HCFP to disclose information relating to its Acceptable Email User Policy. HCFP disclosed some information but refused to comply with questions 1 and 2 of the request, as it considered section 12 of FOIA applied.
2. The Commissioner's decision is that HCFP is entitled to rely on section 12 of FOIA. However, HCFP breached section 16 of FOIA, by failing to provide advice and assistance so far as it is reasonable to do so.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance so far as it is reasonably practicable to do so in accordance with section 16 of FOIA.
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, 9 February 2023, the complainant requested HCFP to provide the following information:

“1. Since January 2020 (by year to date) how many employees used their assigned NHS.net email address for their personal use?

2. Since January 2020 (by year to date) how many contractors used their assigned NHS.net email address for their personal use?

3. What authority, if any, is required from the NHS, as the issuer of the NHS.net email is required to allow your employees / contractors to use the same for their personal use?

4. To request a copy of your Acceptable Email User Policy in operation covering the period from January 2020 to date.

5. What matter(s) would be considered as an abuse of the above Policy?

6. If an abuse is noted re the above, what are the procedures to be followed?

7. To request a copy of your Complaints Procedure, with the compliance timeframe?

8. How many complaints has your organisation received since January 2020 (by year to date)?

9. In regard to said complaints, how many were answered and, within what timeframe, i.e. by received date to response date?

10. What is the review procedure for any overdue complaints that have not yet, as yet, received a response and, currently how many are overdue a response?”

6. HCFP responded on 9 March 2023. For questions 1 and 2 it stated that the information is not held. It provided a response and the recorded information it holds for all the other questions.

7. The complainant requested an internal review on 10 March 2023. They disagreed with its response to questions 1, 2 and 3.

8. HCFP carried out an internal review and notified the complainant of its findings on 14 March 2023. For questions 1 and 2 it revised its response and said that it now wished to rely on section 12 of FOIA. In respect of

question 3 HCFP confirmed that it has disclosed the recorded information it holds, falling within the scope of this element of the request.

Scope of the case

9. The complainant contacted the Commissioner on 15 March 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to establish whether or not HCFP is entitled to refuse to comply with questions 1 and 2 of the request in accordance with section 12 of FOIA. The following section will outline his decision.
11. The complainant raised concerns over HCFP's compliance with the NHS Email User Acceptance Policy and the use of NHS emails for personal information. These issues are excluded from this investigation. The purpose of this notice is to address the FOIA request that was made and reach a decision over whether HCFP has complied with its obligations under FOIA.

Reasons for decision

Section 12 – cost limit

12. Section 12 of FOIA states that a public authority does not have to comply with a request if it estimates that it would exceed the cost limit. The cost limit for HCFP is £450 or 18 hours of work, at a rate of £25 per hour. A public authority is only permitted to consider the cost of determining whether it holds the information, locating and retrieving that information and extracting that information from any information which is not in the scope of the request.
13. HCFP confirmed that it does not prohibit staff from using NHS mail for private use but it does make staff aware that it reserves the right to search email accounts if necessary.
14. It advised that NHS Mail accounts are provided to it via Accenture, who have been contracted by NHS England to provide the service. It said that it has no control over its configuration or day to day operation.
15. To access the account of any member of staff it must first obtain authority from the Chief Executive of The West Yorkshire Integrated Care Board and the only way to know if an email is personal is to check the contents of that email.

16. HCFP pointed out further that numerous organisations offer discounts to NHS Staff and require staff to validate their identity via their NHS email address. These emails would be classed as personal use.
17. To comply with questions 1 and 2, it would need to check a significant amount of emails individually to see if they are classed as personal use. It said that there are 260 working days in a year. If it is assumed that all staff have 30 days holiday per year and send on average 10 emails each per day which would be classed as personal use, this would equate to 2300 emails per year. At 2 minutes per email, it would take 76 hours for each member of staff.
18. HCFP said that the complainant has asked for a minimum of 3 years for each member of staff. It has 112 members of staff currently and changing numbers of contractors with email addresses. This would then equate to in excess of 8512 hours per year of work to complete the search as requested.
19. It explained further how these figures had been arrived at. It advised that it had already completed a comprehensive search of one member of staff's emails, as requested by the complainant, for anything naming him or a small group of other named parties specifically.
20. The Commissioner considers that the complainant did not ask for the number of emails sent by each member of staff for personal use from January 2020 to date. Instead they asked 'how many employees' and 'how many contractors' 'used their assigned NHS.net email address for their personal use'. The cost estimate above is based on establishing how many emails each member of staff sent for personal use over the timeframe specified.
21. To comply with questions 1 and 2 (as they are worded), HCFP would only have to search and review individual emails for each member of staff for each of the 3 years until it has established that they had used the email address for personal use. This could be the first email it checks for each year if that member of staff uses the account daily for personal use. It could be much longer for those staff members who do not routinely use the email address for personal use or have periods of absence around the time that they are checking.
22. There are 112 members of staff. Even at a low estimate of 5 minutes to first retrieve them and then review each year's worth of emails to ascertain if they had used the email account for personal use, this would equate to 1680 minutes of work or 28 hours of work, which is clearly over the cost limit prescribed by FOIA. Clearly, as indicated in the previous paragraph, locating any personal use emails in the case of some staff members might take much longer to establish.

23. For these reasons, the Commissioner is satisfied that section 12 of FOIA does apply, although this is based on a different interpretation of questions 1 and 2 to that taken by HCFP and what would be required in order to comply. If the complainant did actually require to know how many employees and contractors used their email account for personal use **and** the number of emails they sent, they would need to make a fresh request for this specific information, as the number of emails was not asked for in the original request.

Section 16 – advice and assistance

24. Section 12 of FOIA triggers the duty to provide advice and assistance so far as this is reasonably practicable, even if this is to confirm that on a particular occasion there is no advice and assistance that can be provided. This is to enable the complainant to reconsider their position and submit a fresh request that could be potentially processed within the cost limit, should they choose to do so.
25. Looking at HCFP's responses there is no indication that any advice or assistance was provided to the complainant. The Commissioner has therefore recorded a breach of section 16 of FOIA and requires HCFP to now consider its obligations under section 16 and provide appropriate advice and assistance to the complainant.

Right of appeal

26. 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

27. 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.
28. 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

Samantha Coward
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