

**Freedom of Information Act 2000 (FOIA)
Decision Notice**

Date: 17 October 2011

Public Authority: The Royal Wolverhampton Hospitals NHS Trust

Address: New Cross Hospital
Wolverhampton
West Midlands
WV10 0QP

Decision (including any steps ordered)

1. The complainant has requested a copy of compromise agreements entered into with doctors of any grade over the last 10 years. He also requested a list of exploratory issues covered by the compromise agreements (ie. the reasons why the compromise agreements were entered into).
2. The Information Commissioner's decision is that The Royal Wolverhampton Hospitals NHS Trust (the Trust) has correctly applied section 12 of the FOIA to this request for information.

Request and response

3. On 5 February 2010, the complainant wrote to the Trust and requested information in the following terms:

'Please provide copies of all compromise agreements you have entered into with doctors of any grade. Please also provide a list of exploratory or illustratory issues covered by the compromise agreements (ie. the reasons why the compromise agreements were entered into.)'

This request was to cover the previous 10 years.

4. The Trust responded on 5 March 2010. It stated that it holds information which may be relevant to the request. However it considered that the information was exempt from disclosure under section 41(1) of the FOIA.
5. Following an internal review the Trust wrote to the complainant on 23 March 2010. It stated that whilst it does hold records on all compromise agreements it could confirm that it holds no information that is relevant to this request. It therefore had nothing to disclose to him.

Scope of the case

6. On 4 March 2011 the complainant contacted the Information Commissioner (the Commissioner) to complain about the Trust's failure to respond to his request.
7. On 14 April 2011 the Trust confirmed to the Commissioner that it holds no records of compromise agreements entered into with doctors of any grade. On 22 July 2011 the Trust explained that it was satisfied that it did not hold any compromise agreements because the Director of Human Resources (HR) and the Deputy HR Director had confirmed that they had no knowledge of any such agreements. The Director of HR had been in post since February 2006 and the Deputy since August 2005.
8. The Trust explained that all information relating to compromise agreements is held on individual personal files and in order to account for the time period before the appointment of the Director of HR it would have to conduct a manual review of these files. It estimated that to provide one year's worth of information would take over 40 hours work. It therefore applied section 12 of the FOIA to this information request.
9. The Commissioner considers that the scope of this case is concerned with the application of section 12 to this information request.

Reasons for decision

10. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.

11. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. In performing its calculation, a public authority may take into account the cost of determining whether it holds the requested information plus the cost of locating, retrieving and extracting it. For public authorities such as an NHS Trust, this cost limit is currently set at £450 and equates to 18 hours of work at £25 per hour.
12. The Trust has confirmed that its response (that it holds no records of compromise agreements entered into with doctors of any grade) was not based upon recorded information but was based solely upon the knowledge of the HR Director who has been involved in the compromise agreement process since 2006. However the Trust has now confirmed that it would need to examine manual files for the years 2000 to 2010 to verify its response to this information request and provide a definitive answer based upon recorded information.
13. The Trust has confirmed that neither its Finance nor HR Departments hold any records which might indicate the existence of a compromise agreement. It has confirmed that this information is also not held elsewhere on behalf of the Trust (for example by a solicitor).
14. The Trust has explained that compromise agreements are signed by the staff member, their legal adviser and the Trust before being retained as paper documents on the personal files of the staff members concerned. These files are held by the appropriate line manager rather than HR.
15. The Trust has explained that data from its computerised HR database has identified a total of 2721 doctors who left the Trust during the period April 2002 to date (2011). This equates to an average of 302 doctors per year.
16. In addition the Trust has explained that whilst compromise agreements are more commonly associated with outlining the terms and conditions agreed by an employer and employee when the contract of employment is going to be terminated, they can also be used as part of a dispute resolution process or to settle an Employment Tribunal claim. The Trust therefore considers it would also have to search the manual files of current staff in order to respond to this request. It has confirmed that it currently employs 582 doctors who were appointed to the Trust prior to 1 January 2011.

17. The total number of files which may need to be searched for the period April 2002 to February 2010 is approximately 2416 files ((302 x 8) + 582). The number of current employees (582) will be slightly less as the figure should be as it was in February 2010, not in 2011.
18. The Trust has explained that it would be necessary to search the personal files held for each individual to establish whether a compromise agreement is held for that person. It does not hold any other files that would indicate whether a compromise agreement was held for a particular doctor.
19. Personal files held for doctors who left the Trust between 2008 and 2010 are held as manual files. Personal files for currently employed doctors are also held as manual files. These are held in a total of 5 locations; all are held alphabetically, with those relating to leavers further categorized by year of termination.
20. Personal files relating to doctors who left Trust employment prior to 2008 have been scanned and are held electronically in PDF format.
21. However, data that pre-dates April 2002 is not held in the Trust's computerised archives. The Trust has explained that it would therefore be necessary to review its manual files to provide an accurate figure of leavers for the period February 2000 to March 2002.
22. In summary therefore, to answer this information request, the Trust would need to search:

Manual files	2000-2002
Electronic PDF files	2002-2008
Manual files	2008-2010

There are approximately 2416 files for the period April 2002 to February 2010.
23. The Trust has explained that the volume of documentation held in each manual file will vary significantly and is largely influenced by the individual's length of service in the Trust. It estimated that it would take an average of 15 minutes to review each manual file. It has not performed a sampling exercise but has provided this estimate based upon its experience of file sizes.
24. As an indication of the time involved to search the manual files, the Trust has explained that in 2010 alone there were 264 leavers and at 15 minutes per file, this would take 66 hours.

25. The Commissioner has calculated that even if the search took 3 minutes per manual file, it would take approximately 13.2 hours to search the files for 1 year. This is based on the 2010 figure of 264 leavers per year and does not take into account the number of current employees.
26. The Trust has not provided an estimate of searching the electronic PDF files for the years 2002 to 2008. However the Trust has confirmed that there is one PDF file per member of staff which contains all the scanned documents from the manual file. Each PDF file would therefore need to be opened and searched for any mention of compromise agreements. Even if such a search took 1 minute per individual, this would take 30 hours to complete (based on an average of 302 leavers per year for 6 years).
27. In view of the above, the Commissioner's conclusion is that the Trust was correct to refuse this request under section 12 of the FOIA.
28. The Commissioner is also satisfied that the Trust is unable to provide advice and assistance to the complainant in accordance with its obligations under section 16 of the FOIA.

Right of appeal

29. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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
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