

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2012

Public Authority: NHS Rotherham

Address: Oak House
Moorhead Way
Bramley
Rotherham
S66 1YY

Decision (including any steps ordered)

1. The complainant has requested information from NHS Rotherham ("NHSR") about the number of practitioners on its performers list that have not worked in the Rotherham locality within the past 12 months, but have remained on the list. NHSR initially provided a response to the complainant's request. However, following the complaint to the Commissioner and his intervention, NHSR applied section 12 of the FOIA to the request.
2. The Commissioner's decision is that NHSR is correct to rely upon section 12 of the FOIA. The Commissioner does not require any steps to be taken.

Background

3. NHSR holds three lists that are covered by the National Health Service (Performers Lists) Regulations 2004. The performers lists are held on an electronic register and list practitioners that perform primary care services for NHS patients. The lists are updated on an on-going basis, and these updates are dependent on practitioners providing updates of any changes in their circumstances. When NHSR receives information that a practitioner has stopped working in the locality or has not worked for 12 months, the list is updated accordingly.

Request and response

4. On 5 December 2011, the complainant wrote to NHR and requested information in the following terms:

“Under the Freedom of Information Act, could I please have specific information as to how many Performer’s (Dental and Medical) on the Rotherham Dental and Medical Performer List have not worked in the Rotherham locality within the past 12 months, but yet have remained on the list”.

5. NHR responded on 13 December 2011. It stated that it was only aware of one practitioner who had not worked within the past 12 months yet had remained on the performers list.
6. The complainant wrote to NHR on 20 December 2011 disputing the information provided to him. He considered the response to be incomplete as he stated that he was aware of another individual practitioner who had remained on the performers list but had not worked in the locality for over 12 months. He then asked NHR to check the information it had provided to him.
7. NHR replied on 21 December 2011 to explain that there had been no attempt to provide incorrect information, but that it was dependent on individual practitioners providing NHR with updates of any change in their circumstances. It explained that it would contact the individual named by the complaint to ascertain their status.
8. The complainant responded on 22 December 2011 again questioning NHR’s response and asked it to review the information it had provided.
9. NHR responded on 30 December 2011 and maintained its position in respect of the information provided. It also explained that once it had been established that a practitioner has not worked in the area for 12 months they would then be removed from the performers list. NHR confirmed that it would follow up the anomaly identified as a result of the complainant’s request. This exchange of correspondence was in effect an internal review of the request.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In his submissions to the Commissioner, the complainant raised concerns about being provided with inaccurate information. The FOIA is only concerned with the provision of recorded information and not whether that information is accurate.
11. In its initial submissions to the Commissioner, NHSR indicated that it had provided the complainant with the information it had available at the time of the request from the performers list. However, it confirmed that this information may be inaccurate and it had not verified it against other recorded information it held.
12. It therefore became clear, during the investigation of the case, that NHSR would need to search through each practitioner's personal file to determine whether or not they had worked in the locality in the past 12 months. NHSR stated that it did not have the necessary capacity to carry out such a search. Consequently, NHSR claimed the section 12 exemption as it explained that to undertake the necessary search would exceed the cost limit.
13. In terms of the requirement under section 16 of the FOIA to provide advice and assistance, NHSR considers that even if the request was refined to specify dental practitioners only, this would still exceed the cost limit. However, the complainant has confirmed that he did not wish to refine his request or to make a new one. He did not want to limit the request to dentists only.
14. The Commissioner considers the scope of his investigation to be the application of section 12 to the request. As the complainant does not wish to refine the request or to make a new request, the requirement to provide advice and assistance under section 16 has not been considered.

Reasons for decision

15. Section 12 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".

16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for non-central government public authorities. A public authority

can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit of £450. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
14. If a public authority estimates that complying with the request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
 15. The Commissioner asked NHSR to provide a detailed estimate of the time and costs that would be incurred by providing the information which falls within the scope of the request. He also asked it to provide a detailed explanation as to how it had calculated those costs.
 16. NHSR explained that there are currently 422 performers on the three performer lists that it operates, of which there are 140 dental practitioners. NHSR estimated that a review of each performer would take approximately eight minutes to complete. It estimated that it would take some 56.26 hours ($422 \times 8 \text{ minutes} = 56.26 \text{ hours}$) to review the total number of practitioners at a cost of £1,406.66.
 17. In its sampling exercise, NHSR carried out a search for the information concerning seven randomly selected dentists, which took 61 minutes to complete. It explained that the cost limit would be exceeded in checking 140 dentists and so searches of the remaining 282 General Practitioners ("GPs") was not undertaken. The request is in relation to all practitioners on the lists and not the 140 dentists.
 18. In providing the breakdown of its estimate NHSR noted that in some of the sample cases it took less time than the 8 minutes to identify that a practitioner had carried out work, whereas in other cases it took much longer. Additionally, some of these searches did not confirm if work had been carried out by a particular practitioner without seeking additional information not held by NHSR.
 19. In respect of the given breakdown of the steps taken, the Commissioner amended the time take in one of the steps from the approximate of three minutes down to one minute as some of the activities did not fall

within those categories that can be considered as part of the estimate.

This still resulted in the search taking approximately 55.5 minutes for these seven examples, or 18.5 hours in total for all dentists. In applying the average time taken for each practitioner this resulted in an overall estimate of 55.5 hours for all 422 practitioners, which clearly exceeds the cost limit by some margin.

20. Section 12 makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
21. The Commissioner's view is that, for an estimate to be reasonable, it must be "sensible, realistic and supported by cogent evidence".
22. The complainant has suggested two other sources of information that NHSR could have used to respond to his request. Firstly, he referred to a claim form used by dentists from which he suggested that NHSR could establish who had worked in the timeframe he specified. However, NHSR has confirmed that it is not in receipt of these claim forms and so this is not recorded information that is held. In any case, as these forms only relate to dental performers, they would not provide information about the GPs.
23. The complainant has also referred to the existence of exception reports for each dental contract and practitioner, which are produced by the NHS Business Services Authority and provided to each Primary Care Trust. The complainant suggested that NHSR would be able to determine who had worked in the locality from these reports. Again, these relate only to dentists and do not provide information about GPs. Therefore, any information from these reports would not bring down the estimate below the cost limit.
24. The Commissioner accepts that NHSR has provided a reasonable estimate and, in consideration of the amount of staff time it would take to review all practitioners to establish whether they have carried out work in the locality in the past 12 months, is satisfied that to search for the requested information would exceed the appropriate limit of £450.

Other matters

25. The complainant has raised concerns regarding the late application of section 12 to the request.
26. The Commissioner accepts the late application of exemptions. However, he considers that NHR could have avoided unnecessary delays if it had fully explained its position in its initial response to the complainant.
27. The Commissioner also notes that NHR did not always provide full responses to his enquires and that the explanations it provided therefore often needed further clarification.

Right of appeal

28. 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

29. 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.
30. 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

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