

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2014

Public Authority: Health and Care Professions Council

Address: Park House
184 Kennington Park Road
London SE11 4BU

Decision (including any steps ordered)

1. The complainant has requested information about complaints against Norfolk County Council social workers. Health and Care Professions Council (HCPC) cited the provision under section 12 (cost of compliance exceeds appropriate limit) and the exemption under section 21 of the FOIA (information accessible by other means), and refused to comply with the request.
2. The Commissioner's decision is that HCPC has correctly applied section 12, section 16 (duty to provide advice and assistance) and section 21 to the request.
3. The Commissioner does not require the public authority to take any further action.

Request and response

4. On 13 September 2013, the complainant wrote to Health and Care Professions Council and requested information in the following terms:

"For each of the years 2009, 2010, 2011, 2012 and 2013 so far, please could you let me know:

How many complaints were made against Norfolk County Council social workers;

How many complaints were considered by an investigation committee;

In how many of these cases was no response received from the social worker;

Please break down the outcomes down into the appropriate categories – I believe these to be no case to answer, case to answer, and, when there was a case to answer, please break down the final results/sanctions into the appropriate categories.

For each complaint, the name of the social worker, and the final outcome of the complaint.”

5. HCPC responded on 23 October 2013. It said that it did not hold the requested information.
6. Following an internal review, HCPC wrote to the complainant on 4 November 2013. It revised its position; refusing to comply with the request and citing the provision under section 12 of the FOIA and the exemption under section 21 as its basis for doing so.

Scope of the case

7. The complainant contacted the Commissioner on 13 December 2013 to complain about the way their request for information had been handled.
8. The Commissioner focussed his investigation on whether HCPC has correctly applied section 12 to the requested information and met its obligation under section 16 of the FOIA to offer advice and assistance to the complainant.
9. He also considered whether HCPC correctly applied the exemption under section 21.

Reasons for decision

Section 12

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
11. The estimate must be reasonable in the circumstances of the case.
12. The appropriate limit is currently £600 for central government departments (and £450 for all other public authorities). Public authorities can charge a maximum of £25 per hour to undertake work to

comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above is the limit applicable to HCPC. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- (a) determine whether it holds the information;
 - (b) locate the information, or a document which may contain the information;
 - (c) retrieve the information, or a document which may contain the information; and
 - (d) extract the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged, it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16.
 14. To determine whether HCPC applied section 12 and section 16 of the FOIA correctly the Commissioner has considered the response that HCPC provided to the complainant, as well as the submission it provided to him as part of his investigation.
 15. In its response to the complainant, HCPC said that its Fitness to Practise Department did not log complaints according to employer as its fitness to practise process concerned individuals and not organisations. HCPC signposted the complainant to its website, where they would be able to find the results of its fitness to practice hearings.
 16. The Commissioner has noted that HCPC acknowledged in its internal review that the time it had taken to respond to the complainant had exceeded the 20 working days for compliance. This breach of section 10 of the FOIA will, however, be recorded as part of the Commissioner's ongoing activity to monitor public authorities' performance under the Act.

Is the information held?

17. HCPC's review went on to clarify that it did hold the requested information but that the work needed to collate the data would exceed the cost limit allowed by the FOIA.

Locating, retrieving and extracting the information

18. It explained that this was because 'Employer' is not a category under which complaints to HCPC are logged. Its electronic database reports cannot therefore be run on this category to allow easy access to the data. To determine the number of complaints about social workers employed by Norfolk County Council specifically would require every case to be manually reviewed individually, which would exceed the £450 limit under section 12 of the FOIA.
19. In its submission to the Commissioner, HCPC provided more detail. Since opening its register to social workers in August 2012, HCPC has received 3,335 complaints about them. It would need to manually search individual case files, each with an average length of 1000 pages, in order to find and extract the employer's name. HCPC says that it would need to search entire files as registrants (ie social workers in this case) can change employers during an investigation.
20. HCPC's quality compliance team has estimated that to search one straightforward case would take an average of five minutes. To search 3335 cases would take approximately 16675 minutes, or 278 hours (at a cost of £6,950).
21. HCPC did not undertake a sampling exercise as its quality compliance team regularly audits case files and is therefore aware of how long it takes to locate information. Someone without this specialist knowledge would take longer to locate the employer details in a case file.
22. In response to a question put to the Commissioner by the complainant, HCPC also explained that neither can it filter its cases by complainant address either (and so find social workers based in particular geographic area). The Commissioner notes HCPC's observation that it does not need a postal address to pursue a complaint against a registrant and, indeed, it receives much of its correspondence from complainants by email.
23. The Commissioner considers HCPC's evidence and arguments to be reasonable and cogent. He is satisfied that complying with the request would exceed the appropriate limit of £450 and that HCPC has correctly applied section 12 to the request.

Section 16

24. Section 16 of the FOIA places a duty on public authorities to offer advice and assistance to those requesting information from it.
25. In drawing the complainant's attention to its website, the Commissioner considers that HCPC has met its obligations under section 16.

26. Although a laborious process, the complainant would be able to use the search facility on the 'Complaints' section of the website to retrieve some of the information they had requested themselves (in those cases where complaints against social workers had reached a final hearing), by searching for all social work cases and reviewing each record to determine whether the employer is Norfolk County Council.
27. The Commissioner notes that it is possible to significantly reduce the scope of a search – to, for example, cases involving only social workers between particular dates – by using the 'Advanced Search' function.

Section 21

28. Section 21 of the FOIA says that information is exempt from disclosure if it is reasonably accessible to the applicant. HCPC has applied this exemption to some of the requested information which is available on its website. The Commissioner notes that information on complaints about social workers where a case has reached a final hearing is already published on its website. Therefore the Commissioner considers that HCPC has also correctly applied this exemption to this particular information.
29. The complainant had mentioned to the Commissioner they had been unable to find on HCPC's website two particular cases of which they were already aware. HCPC has told the Commissioner that this is because its Investigating Committee Panel had investigated these cases and found there no be 'no case to answer' in both. This information would therefore not be made available to third parties, for example through its website.

Right of appeal

30. 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

31. 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.
32. 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 – Complaints Resolution
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