

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 September 2014

**Public Authority:** University Hospitals of Morecambe Bay NHS Trust

**Address:** Westmorland General Hospital  
Burton Road  
Kendal  
LA9 7RG

### Decision (including any steps ordered)

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1. The complainant has requested information about a Board to Board meeting between University Hospitals of Morecambe Bay NHS Trust (UHMB) and North Lancashire Teaching Primary Care Trust (NLTPCT). UHMB stated it would exceed the cost limit to determine if information was held and therefore applied section 12 of the FOIA to refuse the request. The Commissioner's decision is that UHMB correctly refused the request under section 12 and he therefore requires no steps to be taken.

### Request and response

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2. On 17 March 2014, the complainant wrote to UHMB and requested information in the following terms:

*"In May-June 2010 the herein designated 'Halsall Letters' were written. These consisted of letters between Tony Halsall [TH], then UHMB Chief Executive and Janet Soo-Chung [JSC], then North Lancs. Teaching Primary Care Trust [NLTPCT] Chief Executive along with a report prepared for NLTPCT Board:*

- i. Letter from JSC to TH dated 5.5.10.*
- ii. Report related to (i) prepared for NLTPCT Board meeting of 26.5.10.*
- iii. Letter from JSC to TH dated 27.5.10.*
- iv. Letter from TH to JSC dated 28.5.10.*

- v. Letter from JSC to TH dated 3.6.10.
- vi. Letter from TH to JSC dated 14.6.10

Several times within these documents reference is made to the 'forthcoming Board to Board meeting' between UHMB and NLTPCT.

*This FoI request is for the full text of documents, emails and calendar/ diary entries referring to this 'Board to Board' meeting. The request does not include the documents listed in (i) to (vi) above. The meaning of 'full text' is obvious where documents, reports, letters etc. are concerned. In the case of emails, I define 'full text' to mean the entire email thread as recorded, going as far back as possible in the records available to UHMB. In the case of calendar/ diary entries, I define 'full text' to mean the entire entry which refers to the meeting along with the appropriate calendar/ diary entry for any person recorded as being related to the meeting, if those other entries are recorded information available to UHMB."*

3. UHMB responded on 14 April 2014 stating it had conducted a physical search of its document archives and an electronic search of the former Chief Executive's calendar and email account for the whole of 2010. The electronic search was conducted using keyword searches – "board to board", "agenda", "Lancashire" and the name of the former Chief Executive of NLTPCT. UHMB informed the complainant no relevant information had been found.
4. Following an internal review, UHMB wrote to the complainant on 19 June 2014. It explained that it had reviewed its response and conducted some further enquiries and searches to establish if information was held.
5. UHMB informed the complainant that since 2010 its email systems have been updated so email accounts set up for employees prior to 2010 are accessed via a different, often slower method. Although these are electronic documents UHMB does not have software to search individual emails and calendar entries so would need to do this manually. As such UHMB considered it would exceed the £450 cost limit under the FOIA if it were to search the mail boxes and calendars for the whole UHMB Board.
6. However, UHMB did explain that it was reasonable to assume if a meeting between the Boards of UHMB and NLTPCT did take place, UHMB's Chief Executive would have been involved in the arrangements or as an attendee. UHMB did therefore conduct a search of the former Chief Executive's calendar and email account and hard copy archives. This search covered the whole of the 2010 calendar year and used keyword searches for "board to board", "agenda", "Lancashire" and the name of the former NLTPCT Chief Executive. No information was found relevant to the request.

7. UHMB informed the complainant it would also undertake the same search for the former UHMB Chair and would return to him with any results. No information relevant to the request was found from this search.

## **Scope of the case**

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8. The complainant initially contacted the Commissioner on 15 May 2014 and then again on 16 July 2014 following the internal review, to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to determine if UHMB has correctly refused the request under section 12(1) of the FOIA as it would exceed the cost limit to confirm if information relevant to the request is held.

## **Reasons for decision**

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### **Section 12**

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450.
11. A public authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in undertaking the following activities:
  - determining whether it holds the information;
  - locating the information, or documents containing it;
  - retrieving the information, or documents containing it; and
  - extracting the information from any documents containing it.
12. The costs are calculated at £25 per person per hour and in this case the cost limit will be exceeded if the above activities exceed 18 hours.
13. A public authority does not need to make a precise calculation of the costs of complying with a request; only an estimate is required. However, it must be a reasonable estimate and what is reasonable will be determined on a case by case basis. The Commissioner is guided by

the Information Tribunal<sup>1</sup> on this and considers that a reasonable estimate should be sensible, realistic and supported by cogent evidence.

14. The Commissioner is also mindful of his own guidance on this subject<sup>2</sup> which states that a sensible and realistic estimate is one which is based on the specific circumstances of the case.
15. In this case, the request was for the full text of documents referring to a 'Board to Board' meeting between UHMB and NLTPCT which was supposed to take place in 2010. This meeting was referenced in letters which have been described by the complainant as the 'Halsall letters' and were released as a result of previous FOI requests to public authorities and a decision by the Information Tribunal. These letters refer to "*a formal Board to Board meeting would be a useful step forward*" and "*a robust debate at our future Board to Board meeting.*" This meeting would have been between the Boards of UHMB and NLTPCT.
16. UHMB conducted searches of calendars and mail boxes for the Chief Executive and Chair at the time of the request as it was felt that these employees would have been reasonably likely to have been involved in any Board to Board meeting with NLTPCT which would have taken place.
17. UHMB considered this limited search to have been likely to have produced information if it were held but no information was located relevant to the request. The complainant when asking for an internal review had suggested that UHMB should search the information of the full former Trust Board and it is these additional searches which would exceed the cost limit.
18. The Commissioner accepts that the issue is therefore whether section 12 of the FOIA has correctly been applied to refuse the request as UHMB cannot confirm if information is held on the basis of just the limited searches already carried out.

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<sup>1</sup> EA/2006/0004  
<sup>2</sup>

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx)

19. UHMB has explained it would need to carry out the same searches for all of the Board members emails and calendars as it had already done for the former Chief Executive and Chair of UHMB.
20. When estimating the time taken to conduct a mailbox search, UHMB use their previous experience of undertaking this task and working with its infrastructure to provide accurate search results. UHMB have informed the Commissioner about the way in which its email infrastructure operates and, in short, it is not designed to be an archive system but to act as recovery service in the event of accidental deletion. The system takes a snapshot of a mailbox and will include the drafts, all folders and deleted items in a user's mailbox at the time the snapshot was taken. This snapshot is taken approximately every seven days.
21. When UHMB receives a request which requires emails to be searched the first step UHMB takes is to check if the account is still active. If the account is active or has yet to be archived then access permissions to the account need to be granted. The email system then needs to synchronise and update to ensure all emails are viewable and searchable. This process takes between 30 minutes and two hours depending on the size of the mailbox. The Executive Team's mailboxes tend to be larger in size so will take longer to synchronise and become available to search.
22. If the account is no longer available it will need to be restored which UHMB states is a time consuming process requiring input from IT specialists. The process involves locating the correct physical back up tape which will hold the last back up of the mailbox. To do this, a candidate back up file is identified from within the back-up software and the specific tape is then physically located in the tape store. This is then inserted into a drive so the indexes can be searched. The process may need to be repeated until the most up to date back up tape is found and then restoration can begin. This process can take anywhere between a few hours and a full day per account.
23. UHMB has explained once an account is active or restored it would then need to be searched using defined criteria and terms. The time taken for each search term can take from one hour to several hours depending on the domain the account is held on, the size of the mailbox searched and the time period being searched.
24. Once a search has been completed any emails found are copied and manually transferred to a folder. This process ensures that the mailbox is not compromised and remains in the state it was when the last snapshot was taken. UHMB then explained it would perform a second search to ensure the integrity of the first search and to check the number of emails returned is the same.

25. UHMB then performs a data cleanse to exclude emails returned from the search which due to the nature or content are not relevant to the search, for example emails outside the time frame and out of office replies. UHMB states this process takes approximately 30 minutes per folder.
26. A final data cleanse is then performed to remove any duplicate emails and any emails that do not meet the criteria, depending on numbers this may take up to an hour for each mailbox folder. Following this a final review is undertaken by a senior manager to check any remaining emails are within the criteria. Depending on the number of emails this may be a quick or long process and can take up to two hours if there are several emails with attachments to review.
27. To summarise, UHMB has estimated the time to perform these activities as:

STEP	REQUIREMENT	TIME
Setting up accounts	7 accounts over 2 domains. None require restoration.	1 hour
Raw data search	4 search criteria for each mailbox and calendar over 12 month period. 3 accounts on slower domain. Search criteria non-specific so estimated 3 accounts at 1 hour per search and 4 at 30 minutes	20 hours
Integrity check	Same steps as raw data search	20 hours
Data cleanse	21 folders to be reviewed, non-specific search criteria so estimated high volume of emails to review	10.5 hours
Final data cleanse	7 folders per criteria combined	7 hours
Final review	Review of combined folders by senior manager	2 hours
Total		61 hours

28. In addition to the above activities, UHMB has also stated it would need to undertake a manual search of data. For each of the Executive Directors this has been estimated as taking between 30 and 60 minutes.

The files are structured in such a way that any file or folder heading relating to the Chair, Chief Executive or NLTPCT would need to be reviewed for relevant information.

29. Overall, UHMB considers the time required to conduct these additional searches to conclusively state whether information is held would far exceed the cost limit.
30. The Commissioner has considered the further estimates provided by UHMB and he accepts that the method developed by UHMB for accessing emails and archived emails has been developed to be robust and the estimates provided are based on previous experience and therefore, for the most part, reasonable. The Commissioner would query the necessity of repeating the data search to check the integrity of the original search but even if this step was removed the total time required would still exceed 40 hours which, at a rate of £25 per hour of staff time, would be more than the £450 cost limit.
31. The Commissioner therefore accepts that UHMB has correctly refused the request under section 12(1) of the FOIA.

## 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**