

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2016

Public Authority: The Department of Health (DoH)
Address: 79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. The complainant has requested information relating to junior doctor contract negotiations.
2. The DoH refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
3. The Commissioner's decision is that the DoH was correct to apply section 12 FOIA in his case. He also considers that it complied with its obligations under section 16 FOIA.
4. The Commissioner requires no steps to be taken.

Request and response

5. On 8 April 2016 the complainant requested information of the following description:

"Under the Freedom of Information Act 2000, please provide me with copies of the following:

i) Copies of all correspondence and e-mails between Ministers or officials at the Department of Health and Ministers or officials at HM Treasury relating to the junior doctor contract negotiations and subsequent plans for junior contract imposition.

ii) Copies of all correspondence and e-mails between the Secretary of State for Health, the Rt. Hon. Jeremy Hunt, and the Chancellor of the

Exchequer, the Rt. Hon. George Osborne relating to the junior doctor contract negotiations and subsequent plans for junior contract imposition.

iii) Copies of all correspondence and e-mails between the Prime Minister, the Rt. Hon. David Cameron, and the Chancellor of the Exchequer, the Rt. Hon. George Osborne relating to the junior doctor contract negotiations and subsequent plans for junior contract imposition.

iv) Copies of all correspondence and e-mails between the Prime Minister, the Rt. Hon. David Cameron, between the Secretary of State for Health, the Rt. Hon. Jeremy Hunt relating to the junior doctor contract negotiations and subsequent plans for junior contract imposition."

6. On 19 April 2016 the DoH responded. It refused to provide the requested information under section 35(1)(a) FOIA.
7. The complainant requested an internal review on 21 April 2016. The DoH sent the outcome of its internal review on 29 April 2016. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 3 May 2016 to complain about the way the request for information had been handled.
9. During the course of the Commissioner's investigation the DoH revised its position and applied section 12 FOIA to the request as it said that it would exceed the cost limit to comply with it.
10. The Commissioner has considered whether the DoH was correct to apply section 12 FOIA in this case.

Reasons for decision

Section 12 – cost exceeds appropriate limit

11. 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 cost limit to:

- either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
12. The estimate must be reasonable in the circumstances of the case. 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 - 24 hours work for central government departments; 18 hours work for all other public authorities. 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. The appropriate limit for the DoH is £600 or the equivalent of 24 hours work.
14. The DoH explained that during the course of preparing its submissions for the ICO, it became apparent that it should have originally refused the request on costs grounds. It said that the estimated cost of the resource to process the request would have far exceeded the limit of 3.5 days of one member of staff's time or at a cost of £600 to the DoH.
15. The DoH explained that an interrogation of the 6 key policy officials email accounts for merely one component part of the request would have exceeded these costs limits as follows:

"Under the Freedom of Information Act 2000, please provide me with copies of the following:

i) Copies of all correspondence and e-mails between Ministers or officials at the Department of Health and Ministers or officials at HM Treasury relating to the junior doctor contract negotiations and subsequent plans for junior contract imposition....."

It noted that this estimate does not include the amount of information likely to be identified from a search of its official electronic file system Information Work Space (IWS).

Emails per week for 6 key policy officials potentially holding in scope information:

1 official's email account = approx. 30 emails per day

Multiplied 30 by 6 = email intake 180 per day

5 working days multiplied by 180 = 900 emails for all 6 officials
(excluding electronic IWS file system) per week

16. It confirmed that as there are no specific datelines incorporated into the original FOI request, it is quite clear that the likely costs in processing the request will therefore far exceed the maximum costs threshold.

17. The complainant disputed the DoH's submissions in support of its application of section 12 FOIA, he made the following arguments:

"I reject the DoH's position that section 12 applies. The estimates they have provided are not based upon any appraisable evidence. Furthermore, even if we accept that in five working days the officials mentioned would send and receive 900 e-mails these could be rapidly reduced by a simple search of the terms 'junior doctor contract' and 'junior doctor contract imposition'. This would take a matter of seconds and would quickly reduce the number of e-mails of interest thus reducing the cost and time incurred. Once the relevant e-mails were identified the process of redaction could then occur."

18. The DoH reiterated that an interrogation of the 6 key policy officials email accounts was completed for only one component part of the request of the three. Furthermore it explained that this estimate does not include the amount of information likely to be identified from a search of its official electronic file system (IWS). It said that the reason it decided to focus on the searches on the 6 key officials with responsibility for the policy topic in the first instance is that the policy is fast-paced, generating a very high level of traffic and may therefore not have been filed to IWS.

19. It went on to note that the complainant suggested the search terms the DoH should use to locate/identify the information are '*junior doctor contract*' and '*junior doctor contract imposition*'. The DoH said that if these search terms were used, it is likely that some of the information falling within scope would not be located/identified given the generality of the terms. It does therefore consider that it would be required to consider all emails to identify the in scope information.

20. The DoH's estimate is based upon searching the email accounts of 6 officials for 5 working days. The DoH has estimated that these 6 individuals would receive 900 emails between them during a 5 working day period. Whilst using the search terms suggested by the complainant, would be likely to identify emails within the scope of the

request, the DoH has argued that it would not necessarily capture all information potentially falling within scope given the generality of the search terms.

21. The Commissioner considers that whilst the search terms suggested by the complainant would be likely to identify a lot of in scope material it may miss information not containing these terms but still falling within scope. Furthermore the estimate provided by the DoH is for a 5 working day period for one component part of the request. As no specific time frames have been provided within the request, this renders any search conducted very open ended and would therefore cover a much higher number of emails, spanning a number of months if not more. The DoH has also explained that this estimate does not include searching IWS, which could hold further in scope information, and would therefore add to the time/cost implications.
22. Based upon the DoH's submissions, the Commissioner considers that due to the lack of specific time frames within the request and the volume of email traffic received by the officials involved in this policy area, it would exceed the cost limit under section 12 FOIA to comply with the request in this case.

Section 16 – advice and assistance

23. Under section 16 FOIA the DoH is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.
24. The DoH has written to the complainant to suggest that he may wish to make a refined/narrowed-down request by way of specific sub-topics or specific datelines. As far as the Commissioner is aware the complainant has not made a revised request.
25. The Commissioner considers that the DoH has complied with its obligations under section 16 FOIA in this case.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF