

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2016

Public Authority: Frimley Health NHS Foundation Trust

Address: Portsmouth Rd
Frimley
Camberley
Surrey
GU16 7UJ

Decision (including any steps ordered)

1. The complainant requested information about staff dismissals to Frimley Health NHS Foundation Trust (the Trust). The Trust provided some information, cited sections 40 and 22 to part of the request and stated that to try and comply with the remainder of the request would exceed the appropriate limit in costs set by section 12 of the Freedom of Information Act 2000 (FOIA). The Commissioner's decision is that the Trust correctly applied section 12 and found that there is no breach of section 16.

Request and response

2. On 3 May 2016 the complainant made a request for information under the FOIA:
 1. *'From April 2015 until March 2016 how many doctors were dismissed or asked to resign by your Trust*
 2. *In the same period how many doctors were referred to the General Medical Council.*
 3. *In the same period how many nurses were dismissed or asked to resign.*
3. On 23 May 2016 the Trust responded that the information was not held centrally. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450.

4. On 23 May 2016 the complainant requested an internal review and the Trust sent the outcome of its internal review on 10 June 2016.
5. The Trust stated that 2 doctors and 2 nurses were dismissed from the Trust in the requested time period.
6. The Trust explained that whether someone is asked to resign is not recorded centrally and in response to the complainant's comment on other organisations the Trust explained that:

'Every NHS organisation operates differently and for this reason will respond differently to the same FOI request. The Trust can only provide information if it is held, and does not have a legal obligation to create information to respond to a Freedom of Information Request.'

'When a member of staff leaves the Trust, a leavers form is completed, which is where the reason for leaving is recorded. The Trust can only report on these categories. On the leavers form, there is no category for "asked to resign", therefore, the information you are requesting is not held centrally in the Trust's electronic staff record.'

'Any information relating to whether a member of staff was asked to leave the Trust or their reason for leaving the Trust would be in the individual's personnel file/record if it has been recorded.'

'For the time period specified, 114 doctors (typo corrected from 144 to 114) and 399 nurses have left the Trust.'

7. The Trust stated that Section 12 of FOIA applied to this part of the information and gave a detailed estimate of 77 hours for the time required to obtain the information.
8. The Trust also explained that the remaining information about the number of doctors referred to the General Medical Council (GMC) is also held in the individual's personnel file and not in a central location and cited section 12. However, complying with its duty to assist, the Trust suggested that the complainant contact the GMC for this part of the request as the GMC holds a central register of all doctors referred to them.
9. On 15 June 2016 the complainant contacted the Information Commissioner and after providing additional documents, the case was accepted on 16 July 2016.
10. During the Commissioner's investigation, the Trust reviewed the response provided under FOIA and informed the complainant on 21 October 2016 that it was now citing the additional exemptions of section

40 (Personal data of third parties) and section 22 (future publication) for the numbers of doctors referred to the GMC:

'The Trust complies with our duty to refer doctors and nurses to the relevant regulatory bodies where necessary. Due to the low numbers we cannot confirm whether we have referred these 2 doctors to the GMC or not.'

If we have not referred the doctors: *Releasing the number would breach s40(2). The low numbers could lead to identification of the data subjects. As this is personal information which could cause harm, it would be exempt.*

If we have referred the doctors but the GMC decide to take no action: *The GMC determines whether referrals need investigating in the public interest. Releasing the low numbers could lead to identification of the data subjects. If no action is taken, disproportionate harm could be caused to the data subject. Therefore it would be exempt under s40(2).*

If we have referred the doctors and the GMC decide to take action: *Details of GMC hearings are published on the GMC's website. Therefore, in the event that a referral was made and an investigation was conducted, it would be exempt under s22 of the Act, as it will be published by the GMC at a future date.'*

Scope of the case

11. The Commissioner wrote to the complainant on 24 October to explain her view that the Trust was correct to apply sections 40 and 22 to question 2 of the request as she has previously investigated cases where allegations or complaints about doctors were considered to be personal data and exempt under section 40 of the FOIA.
12. As the Trust provided the numbers of doctors and nurses dismissed from the Trust in the requested time period, this will not form part of the complaint to the Commissioner.
13. Therefore the scope of the Commissioner's investigation will be to determine whether the Trust handled the remaining part of the request in accordance with the FOIA. Specifically, she will look at whether the Trust is entitled to rely on exemption Section 12 as a basis for refusing to provide the numbers of doctors and nurses asked to resign.
14. The Commissioner also considered whether the Trust provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 – The cost of compliance

15. Section 12(1) 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 the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

17. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- 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.

Would the cost of compliance exceed the appropriate limit?

18. As is the practice in a case such as this, the Commissioner asked the Trust to confirm if the information is held and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

19. The Trust explained that the requested information (number of doctors and nurses asked to resign) is not listed as a column on the electronic leaver's form.

- A search of the electronic leavers form followed by a comprehensive search of the electronic and then physical file would be the quickest way to locate the information. This is because if it was not held on the leavers form, it could be held in any number of formats such as emails, scanned documents, handwritten notes, etc

20. The Trust provided a detailed explanation of the costs involved to locate the files off site or on site and then to extract the required information.

- Locating and retrieving the 20 files held off site. (20 hours) The Trust uses 2 off-site storage companies who hold the records at various locations. The amount of time would include locating the individual records within the facilities and the time to retrieve the files among the different storage locations. Therefore an estimate of 1 hour per record is reasonable.
- Locating and retrieving the 493 files held on site. (20-40 hours) The information required would predominantly be held in electronic format, however there will also be physical documents held in the employee's files which would have to be located and retrieved in addition to the electronic search. Therefore, on reflection, the estimate of 15 hours advised to the complainant (or 1.83 minutes per record) was low.
- An electronic search would be relatively quick, perhaps ranging from 30 seconds to 1 minute each. The physical files would have to be retrieved from the secure storage cabinets and transported back to the desk space where they could be searched. The files would range in size and an average of 10 could be carried per trip. This would result in approximately 50 trips to the cabinets to locate the files and to retrieve them. As a result, the physical files would take an average of 2 minutes to 4 minutes each to locate and retrieve, based on one person searching for ten at a time and transporting them together.
- This would make the estimate to locate and retrieve both the electronic and physical records between 20.5 hours (2.5 minutes per record x 493 records / 60) and 41 hours (5 minutes per record x 493 records / 60)
- Extracting the information required. (42 hours) This was based on an average of 5 minutes per record. As the information could potentially be held in 2 formats this seems a reasonable estimate.

114 doctors + 399 nurses = 513 staff records
513 records x 5 minutes = 2565 minutes
2565/60 = 42.75 hours

21. The Trust confirmed that a full sampling exercise was not performed but the Access to Health Records Officer provided an example of the electronic leaver's form which is completed and held on the staff record. The form shows that there is no column which can record information such as 'asked to resign'. This is not routinely collected and it is unlikely

to be held in most records. Therefore a search of both the electronic and physical record would be the only way to locate the information.

22. Given the Trust's explanation in the difficulty of locating and retrieving the records from storage and the above estimated times to extract the information, the Commissioner is satisfied that the cost of compliance with the request would exceed the appropriate limit of 18 hours. The Trust was therefore correct to apply section 12 of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).
24. In this instance, the Trust explained to the Commissioner that the number of doctors and nurses asked to resign could not be broken down easily. The Trust could not ask the complainant to name individuals or departments (as this would lead to identification of individuals) and would therefore be exempt due to personal data. The information could not be separated into staff groups such as doctor's data or nurse's data either because the large numbers of each group would exceed the cost limit. (The Trust provided estimates to the Commissioner.)
25. The Commissioner notes that the Trust provided advice to the complainant on the other parts of the request.
26. The Commissioner is satisfied that the Trust provided such advice and assistance as was reasonable in the circumstances, and therefore complied with section 16(1).

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

Right of appeal

27. If 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

28. 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.
29. 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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