

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 August 2017

**Public Authority:** Cardiff and Vale University Health Board

**Address:** University Hospital of Wales  
Heath Park  
Cardiff CF14 4XW

#### Decision (including any steps ordered)

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1. The complainant has requested information about [1] an employment tribunal case, [2] the number of such cases submitted to Cardiff Employment Tribunal, [3] the number of staff dismissed, [4] public interest disclosures and [5] the number of staff offered 'Compromise Agreements'. Cardiff and Vale University Health Board ('UHB') released information within the scope of request [3]. It said it did not hold the information requested at [1], [2] and [4] and is not obliged to comply with [5] as to do so would exceed the appropriate limit under section 12(1) of the FOIA.
2. The Commissioner's decision is that UHB has not complied with section 1(1) of the FOIA in respect of requests [1], [2] and [4].
3. The Commissioner has also decided that UHB has correctly applied section 12(1) to request [5] and that it was reasonable not to offer the complainant advice and assistance with regard to this request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Reconsider requests [1], [2] and [4] and issue fresh responses that comply with the FOIA.

5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 22 July 2016, the complainant wrote to UHB and submitted five requests which included the following:

*"The total cost of my employment case ([Reference number redacted]) which has now concluded, please detail - legal fees, expenses and compensation during the following days and persons attending:*

*Hearings:*

*7 day Liability Hearing - June 2015*

*1 day Reconsideration Hearing - January 2016*

*2 day Remedy Hearing - April 2016*

*Half day Reconsideration Remedy Hearing - July 2016*

*Persons involved:*

*Legal and Risk Services, [Redacted], [Redacted], [Redacted] and [Redacted] (Barrister)*

*Attendance expenses paid to staff members of CAVUHB - [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], [Redacted]*

*2. The number of cases (listing the reasons eg UDL, BOC, DAG, RRD and any other) submitted to Cardiff Employment Tribunal from 2012 until present 2016?*

*3. How many staff members (all grades) have been summarily dismissed/dismissed from 2012 to present 2016 with given reasons for their summary dismissal/dismissal?*

*4. How many staff members (all grades) have made 'Public Interest Disclosures' from 2012 to present 2016?*

*5. How many staff members (all grades) have been offered 'Comprise Agreements' from 2012 to present 2016?"*

7. UHB responded on 18 August 2016 (its reference FoI/16/237). With regard to [1] UHB said that the cost of the specific case was not determined. It said that UHB staff who attended hearings would not have received any 'attendance allowance'. With regard to [2], UHB said this information is not held and provided Cardiff Employment Tribunal's contact details. UHB released information within the scope of request [3]. With regard to [4], UHB said it did not hold a 'public interest disclosure register' and asked the complainant to clarify this request. UHB said it was not obliged to comply with [5] under section 12 of the FOIA.
8. The complainant requested an internal review on 18 August 2016 which included a clarification of request [2]. In correspondence to the complainant dated 24 August 2017, UHB asked the complainant for clarification (without indicating what it was specifically that needed to be clarified) and the same day the complainant clarified request [4].
9. Following an internal review UHB wrote to the complainant on 23 September 2016. It confirmed that the information requested at [1] and [2] is not held and that it was correct to rely on section 12 with regard to [5]. With regard to [4] UHB appears to have suggested that it was satisfied with its response to the request; that it considered the request was ambiguous and that it had been correct to seek clarification.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 1 November 2016 to complain about the way her requests for information had been handled. In her initial 'scoping' letter to the complainant, the Commissioner asked if there were matters other than requests [1], [2], [4] and [5] that should be investigated and the complainant did not indicate otherwise. It therefore appeared to the Commissioner that the complainant was satisfied with UHB's response to request [3].
11. The Commissioner's investigation has focussed on whether UHB complied with section 1(1) of the FOIA with regard to requests [1] and [2] and [4], and whether it can rely on section 12(1) with regard to request [5].

## Reasons for decision

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### Section 1 – information held/not held

12. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the information is held and (b) to have the information communicated to him or her if it is held.
13. With regard to request [1], in its submission to her UHB has told the Commissioner that the relevant staff who would have knowledge of the issues were asked for relevant information and that they completed the relevant searches. It says that the searches would have been of hard copy records and electronic information using computers that were connected to its network. Without specifying the terms used, UHB says that as many search terms would have been used as could identify the requested information. Finally, UHB has told the Commissioner that no relevant information has been destroyed or deleted and that any financial information would have been retained in accordance with particular legal requirements.
14. The Commissioner has noted that in UHB's response to the complainant, it had told her that the cost of the tribunal case in question had not been determined and that its staff would not have received an 'attendance allowance'. In its review, UHB told the complainant that it does not hold the requested information.
15. It appears to the Commissioner that in [1] the complainant has requested: (i) the total cost of the case with reference to; (ii) the legal fees, expenses and compensation relating to UHB Legal and Risk Services staff and its Barrister and (iii) attendance expenses paid to particular UHB staff.
16. The Commissioner is prepared to accept that staff members are not paid attendance allowance to attend employment tribunals and that UHB therefore does not hold the information requested at [1.3]. She is less persuaded – not least because she does not consider UHB's description of the searches it has carried out to be persuasive – that it would not hold at least some of the information requested at [1.1] and [1.2].
17. While UHB may not have held a total cost figure for the tribunal case with reference to [1.2] and [1.3], presumably it holds the 'building blocks' from which it could derive this figure: that is, any legal fees, expenses and compensation paid to legal staff including its Barrister, plus attendance allowance paid to other staff (which appears to be £0.00). It has, after all, told the Commissioner that it retains financial information.

18. The Commissioner therefore cannot accept UHB's position regarding request [1.1] and request [1.2] and considers UHB has breached section 1(1)(a) with regard to these requests.
19. With regard to request [2], UHB says that it would not know how many cases were submitted to the Cardiff Employment Tribunal and that only the Tribunal would hold this information because it receives these cases from all organisations and is not a dedicated service for UHB.
20. This response seemed to the Commissioner to be somewhat disingenuous. In her request for an internal review of 18 August 2017, the complainant had clarified that she was requesting information on tribunal cases submitted from UHBA to the Cardiff Employment Tribunal.
21. As a result of further contact from the Commissioner during her investigation, UHB indicated that it accepted that the request concerned the number of tribunal cases submitted from UHB to the Cardiff Employment Tribunal. It further indicated that this information would be held within individual staff records and suggested that to locate, retrieve and extract the information would exceed the appropriate limit under section 12(1) of the FOIA. Despite a number of opportunities to provide arguments to support any application of section 12(1) to this request, these arguments were not forthcoming at the time of this notice.
22. The Commissioner therefore cannot accept UHB's position in its response to the complainant's request [2]. This is because it seems not to have taken account of the complainant's clarification on 18 August 2016. The Commissioner has found that UHB has breached section 1(1) with regard to request [2].
23. With regard to [4], as a result of further contact from the Commissioner, UHB indicated that it might hold information falling within the scope of this request. UHB further indicated that the cost of determining whether or not it held the information might exceed the appropriate limit under section 12(2) of the FOIA. Despite a number of opportunities to provide arguments to support any application of section 12(2) to this request, these arguments were not forthcoming at the time of this notice.
24. The Commissioner has therefore found that UHB has breached section 1(1)(a) with regard to request [4].

### **Section 12 – cost exceeds appropriate limit**

25. 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:
  - 12(1) either comply with the request in its entirety, or

- 12(2) confirm or deny whether the requested information is held.
26. 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; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to UHB. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
- determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
27. 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 of the FOIA.
28. With regard to request [5], in its submission to her, UHB has told the Commissioner that it does not hold a central register of staff who have been offered compromise agreements. In addition, its Electronic Staff Record will not centrally capture this data. UHB says information relating to compromise agreements would be included in individual staff personnel records. Therefore, to obtain this information it would be necessary to undertake a manual search through individual personnel records of all staff who have left the organisation since 2012 to date.
29. UHB has told the Commissioner that it had a total of 8,908 staff who left UHB between January 2012 and December 2016. This is across nine hospital sites, several other external sites and several other external sites that are not clinical in nature. UHB says that staff personnel files are not held centrally but are retained by each staff member's line manager across all of its sites. Once files are located, each would need to be manually reviewed to identify any information relating to a compromise agreement. Once this was completed, UHB says a further piece of work would be needed to compile a definite register for consideration for disclosure.
30. UHB has estimated that to complete all this work would take approximately 4, 452 hours, which has been calculated as follows:
- Travel approximately between 10 minutes and 30 minutes

- Retrieval per record approximately 5 minutes
  - Review per record approximately 10 minutes
  - Extracting per record approximately 5 minutes
31. UHB has averaged the total time to 30 minutes to compensate for the difference in travel time between all its sites. This has been calculated as an average on the basis that some staff work on the University Hospital of Wales Site whilst others work at sites that take approximately 15 – 30 minutes to travel to.
32. 8908 staff records at 30 minutes per record = 267,240 minutes or 4,454 hours. 4,454 hours at a rate of £25 per hour = £111,350. UHB says this exceeds the total cost allowed by the FOIA for responding to a request and UHB therefore considers that relying on section 12(1) was justified.
33. UHB confirmed that it did not undertake a sampling exercise in order to determine this estimate but that the estimate was based on the quickest method of gathering the requested information.
34. Given that UHB does not hold a central register of staff who have been offered compromise agreements; the number of staff who have left the organisation between the dates given in the request; and that the information, if held, is held in manual records that would need to be individually and manually reviewed, the Commissioner is prepared to accept that it would exceed the appropriate limit under section 12(1) to comply with request [5]. Even if UHB had overestimated the length of time it would take to process each of the 8,908 records and it only took 10 minutes per record, it would still take 1,485 hours to comply with the request. The Commissioner is therefore prepared to accept that UHB has correctly applied section 12(1) to this request.

### **Section 16 – advice and assistance**

35. Section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance to an applicant who has requested information from it, so far as it would be reasonable to do so.
36. UHB has told the Commissioner that it considers it met this duty by providing the complainant with Cardiff Employment Tribunal's contact details, with regard to request [2].
37. However, as noted above, 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.

38. UHB does not appear to have offered advice and assistance with regard to request [5] specifically. However, if it would take UHB 30 minutes to process one staff record, it would only be possible to review 36 staff records out of a total of 8,908. Given the breadth of the complainant's request it does not appear to the Commissioner that the request could be meaningfully refined and that it was therefore reasonable not to offer advice and assistance with regard to this particular request. The Commissioner does, however, remind UHB to consider this duty with respect to section 12 and to refer to it in the future, even if it is simply to state that it considers it is not possible to refine a request.
39. The Commissioner does not consider UHB has breached section 16(1) on this occasion.



## Right of appeal

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40. 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)

41. 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.
42. 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**  
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