

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2021

Public Authority: Avon and Wiltshire Mental Health Partnership
NHS Trust

Address: Bath NHS House
Newbridge Hill
Bath
BA1 3QE

Decision (including any steps ordered)

1. The complainant has requested from Avon and Wiltshire Mental Health Partnership NHS Trust (the Trust) the total cost of legal services for the inquest of a named individual. The Trust cited section 12(1) of the FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Trust was not entitled to rely on section 12(1) of the FOIA to refuse to comply with the request.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - Issue a fresh response to the request which does not rely on section 12 of the FOIA.
4. The Trust must take this step 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

5. On 10 September 2020, the complainant wrote to Trust and requested information in the following terms:

"How much was spent on legal services for the inquest of [redacted]"
6. On 25 September 2020, the Trust responded. It refused the request. It said *"we do not hold this information without having to go through individual invoices. We have sent information to you previously relating to the request for detailed legal expenses and we have reached the maximum amount of time without incurring additional time"*.
7. On 26 September 2020, the complainant wrote to the Trust and asked it to conduct an internal review. She said that the inquest was held around [redacted] months after the death of the individual concerned, that she did not expect there to be more than 24 invoices for legal costs relating to the inquest, and that she had asked for 'considerably less' information than she had requested previously.
8. The Trust carried out an internal review on 16 October 2020 and wrote to the complainant maintaining its position. It said that invoices are saved numerically on the Trust's computer system. In order to locate those containing information within the scope of the request, it would have to open all the invoices from the relevant period and doing this would exceed the appropriate limit (defined under section 12 of the FOIA).

Scope of the case

9. On 20 October 2020, the complainant contacted the Commissioner to complain about the way her request for information had been handled.
10. During the course of the Commissioner's investigation, the Trust confirmed that although it had referred (in its initial response to the request) to time spent processing a previous request from the complainant, it does not wish to aggregate the requests in its application of section 12 of the FOIA in this case.
11. The Trust however then said that it does not hold the requested information. It said that although it holds invoices for the work carried out relating to the Inquest concerned, some of the work done on the inquest 'would have been carried out' under the 'Inquest Scheme', which is the name for the contract it has with its local solicitors to provide

support and guidance for inquests where HM Coroner considers the Trust an interested party.

12. Inquests that fall within the terms of the Inquest Scheme (e.g., they are listed for 2 days or under) are covered by the agreement and receive support. When the Coroner provides an estimate of how long an inquest will be listed for, the Trust is notified by the Solicitors if the matter will exceed 2 days in Court. If it will, it then comes out of the Inquest Scheme as it no longer meets the requirements of the scheme. All 'activity' from that point will be invoiced outside the scheme.
13. The Trust said that because part of the cost for the Inquest in this case would include work carried out under the Inquest Scheme and that cost could not be quantified, it would not therefore be possible to provide an accurate total legal cost of the Inquest. In a further submission however, it confirmed that it did not keep a record of the number of hours worked under the scheme but that it is 'unlikely that there would have been a significant volume of billable hours accrued before it became clear that the case would fall outside of this 2 day Inquest hearing requirement'. It also provided evidence that it disclosed the total cost of the Inquest Scheme each year between 2018 and 2020 in response to a previous request from the complainant (RFI-2018) where she requested all legal costs over a six year period.
14. It is the Commissioner's view that if an Inquest had been handled under the Inquest Scheme then any costs for hours accrued (whilst working on the Inquest under the scheme) would form a building block of the total cost of the Inquest and if this cost was unquantifiable then the information would not be held, as opposed to incomplete.
15. The Commissioner however notes that the Trust did not, in its initial response or review deny holding the requested information because part of the total costs for the Inquest concerned were unquantifiable. She notes that, the Inquest in this case was in fact assessed as ineligible for the Inquest Scheme and this occurred when the inquest was listed (at an early stage of the Inquest process). She therefore questions precisely what amount of time, if any, the Inquest would have spent as part of the Inquest Scheme.
16. The Commissioner also notes that the Trust has not definitively confirmed that work was carried out under the Inquest Scheme in relation to the Inquest in this case, e.g., 'would have been carried out' under the Inquest Scheme. She is reminded of the Trust's view that it is unlikely that there would have been a significant number of billable hours accrued before the assessment determined that the Inquest was not eligible for the Scheme. She notes that the Trust said that time

spent on Inquests under the Inquest Scheme is not calculated on an hourly basis, that it did not keep a record of the number of hours the Inquest in this case spent under the Inquest Scheme, and that ultimately there has been no evidence presented of work carried out under the Inquest Scheme.

17. She also notes that the Trust has previously disclosed the Trust's total spend on the Inquest Scheme, which, covers the period of the request in this case and any supposed nominal costs that may have been accrued if the Inquest was in fact, for a period, handled under the Inquest Scheme.
18. For these reasons the Commissioner does not accept that the requested information is not held because part of the information would fall under the Inquest Scheme and relates to unquantifiable costs. She has therefore gone on to consider whether the Trust correctly applied section 12 of the FOIA to refuse the request.

Reasons for decision

Section 12 of the FOIA – cost of compliance exceeds limit

19. Section 12(1) of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to comply with the request.
20. 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:
 - 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.

21. The four activities are sequential, covering the retrieval process of the information by the public authority.
22. The appropriate limit for the Trust is £450 as it is not a part of a central government department.

The complainant's position

23. The complainant said that she has not asked for information that in her view would require a large number of invoices to be reviewed. She said that she does not believe the Trust can discharge its financial governance responsibilities and demonstrate value for public money if it is unable to 'ascertain' the content of the invoices concerned effectively.

The Trust's position

24. The Trust said that the requested information consists of two parts. One part is costs accrued under the Inquest Scheme (see points 11 – 18 above). The other part is information contained within invoices from the Solicitors instructed to deal with the Inquest.
25. In regard to the information within scope of the request that is contained within the invoices from the Solicitors that were instructed to deal with the Inquest, the Trust initially said that all invoices are held electronically and filed numerically, they are not named. Because of this, it is not possible to search invoices by company name. It said that in order to identify the invoices that relate to the particular Inquest in this case, it would have to open and check each invoice it holds to identify invoices from the particular Solicitor's firm instructed for the Inquest during the period relevant to the scope of the request. It said that this was the only way to check if the invoice related to the Inquest and that it 'would take too long'.
26. The Trust said that it receives 10,000 invoices per month. It said that it carried out a sampling exercise and found that it took 1 minute to open an invoice and check to determine whether it held information relevant to the scope of the request. It therefore estimated that it would take 'roughly' 167 hours to open all the invoices for one month.
27. The Commissioner asked the Trust to confirm the period relevant to the scope of the request, to search and confirm the number of invoices held for that period (as opposed to implying that the 10,000 invoices received per month generally would have to be searched) and to provide screen shots of how the information is held / searched on its systems.

28. The Trust confirmed that the period relevant to the scope of the request is May 2018 to September 2019. It said that it held 120,288 invoices for this period. It said that these invoices contain itemised services that include costs for Inquest Support, HR Legal Advice, Contracting Support or Estate / Property. In order to identify costs that relate to the Inquest relevant to the scope of the request, each invoice would need to be read and matched up to the cases they relate to (this in turn would identify those that only relate to the Inquest concerned). The Trust said that it took 60 seconds to open an invoice and check for information relevant to the scope of the request, this included any time needed to match it against any other documentation necessary. It also provided screen shots of how the information is held / searched for on the system.
29. The Commissioner noted that the screen shots showed that searches can be performed by 'SuppID' (supplier ID), and that the Solicitor instructed for the Inquest in this case had a supplier ID. She asked the Trust why, if searches can be performed by supplier ID for the relevant Solicitor and period, it has not searched via this obvious search option, as opposed to claiming that because the invoices are held numerically, it would have to search each individual invoice for the relevant period and providing a more general figure of 120,288 invoices that would have to be searched. She asked the Trust to perform a search of its invoices for the relevant period using the relevant Solicitor's ID and confirm the total number of invoices held.
30. The Trust failed to provide the explanation requested, instead it said that it performed an electronic search using the supplier ID for the relevant Solicitor and period and confirmed that it identified 51 invoices that may contain information within the scope of the request.
31. The Commissioner asked the Trust to do a costing exercise where it calculated how long it took to review one invoice and identify /extract information relevant to the scope of the request from it.
32. The Trust said that the invoices contain schedules; from which they would be able to determine whether the invoice relates to the Inquest concerned. The available invoice schedules were reviewed to identify activity / costs related specifically to the Inquest in question. It said it took the Trust 2.5 hours to complete this work. It also said that eight of the schedules were found to be missing.

The Commissioner's view

33. The Commissioner notes that although the Trust did not confirm how long it took to specifically review one invoice to identify whether it contained information relating to the total cost of the Inquest concerned,

it did however state that it took 2.5 hours (150 minutes) to review all 51 invoices to identify this information.

34. The Trust also failed to confirm how many invoices (of the 51) were found to contain information relevant to the scope of the request. However, if for example all 51 invoices contained information, and it took the Trust a further 2 minutes per invoice to extract costs relating to the inquest concerned from each invoice and add them together, which the Commissioner feels is a fair and reasonable amount of time in the absence of any further estimate offered by the Trust, this equates to an additional 1 hour and 42 minutes of time (102 minutes). She therefore estimates that it would take the Trust a total of 252 minutes or 4 hours and 12 minutes to provide the complainant with the requested information (150 minutes to identify the invoices containing information + 102 minutes to extract sums and add them together = 252 minutes or 4 hours and 12 minutes).
35. The Commissioner accepts that it took the Trust 2.5 hours to review all 51 invoices to identify those containing information within the scope of the request and when this figure is added to the estimate for extraction and calculation costs, she does not agree that the cost of compliance would exceed the appropriate limit (the 18 hour limit) prescribed by the FOIA.
36. In regard to the eight missing invoice schedules. The Commissioner refers to section 24 onwards of her 'Determining whether information is held' guidance¹ (concerning incomplete and inaccurate records). She is reminded that in *Home Office v The Information Commissioner (2008)*, the Tribunal clarified that under the FOIA the right of access is to the information held, not information which is accurate. Where information is unlikely to present the whole picture (as may be the situation in this case), a public authority is still obliged to provide the requested information based on those records and explain to the applicant that the information may not be very reliable. Therefore, even if the information forming the building blocks is incomplete or inaccurate, the information is deemed held.
37. On the basis of the information provided, it is the Commissioner's view that section 12 of the FOIA has been incorrectly applied by the Trust to refuse the complainant's request.

¹ [determining whether information is held foi eir.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/foia-guidance/determining-whether-information-is-held-foi-eir.pdf)

Other matters

38. The Commissioner is concerned with the Trust's apparent unwillingness to engage appropriately with her and notes that although it was asked to provide clear and substantial responses to her questions, its more recent responses have been brief (sometimes one sentence) and have lacked the required detail.
39. This has resulted in her having to revert back to the Trust for further explanation in writing and over the telephone on multiple occasions. Clearly, this diverts resources from the Trust's staff as well as the Commissioner's when a little more care would have avoided this.
40. As with many public authorities the Trust's FOI officer collates information provided to them by other departments, in this case the legal department, rather than being responsible for formulating the response itself. When the Commissioner asked for clarity and further information about identifying and extracting information from the 51 invoices identified, it remained unclear what the legal team meant in its responses.
41. The Commissioner carried out a brief internet search and was able to ascertain that the Inquest lasted six days. This information could have assisted the Trust at the outset in establishing whether or not it had been under the Inquest Scheme and potentially helped identify any information held.
42. The Commissioner recommends that the Trust reviews the guidance² available on the website to ensure it has adequate request handling procedures in place.

² [Freedom of information and Environmental Information Regulations | ICO](#)

Right of appeal

43. 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

44. 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.
45. 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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