

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 August 2021

**Public Authority:** Devon Partnership NHS Trust

**Address:** Wonford House  
Dryden Road  
Exeter  
EX2 5AF

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information about training in the Hare Psychopathy Checklist - Revised. Devon Partnership NHS Trust ('the Trust') is relying on section 12(1) of the FOIA to refuse to comply with the request as it says the cost of doing so would exceed the appropriate limit.
2. The Commissioner's decision is as follows:
  - The Trust is entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.
  - It would not be possible to refine the request meaningfully in order to bring complying with it within the cost limit. Therefore there was no breach of section 16(1) (advice and assistance).
3. The Commissioner does not require the Trust to take any remedial steps.

#### **Request and response**

---

4. On 24 January 2020 the complainant had written to the Trust and requested information in the following terms:

“Can you please confirm how much money the Devon Partnership NHS Trust spent training Devon Partnership NHS Trust employees in the use of the Hare PCL:SV instrument in 2002?

Can you please confirm the number of Devon Partnership NHS Trust employees in 2002 who were trained in the Hare PCL:SV instrument?”

5. On 2 March 2020 the Trust had responded to the request. The Trust advised the complainant that it did not consider it was a valid request for recorded information under section 8 of the FOIA and it asked the complainant to confirm their identity. The complainant requested an internal review and explained that they had already confirmed their identity in correspondence with the Trust about a separate request they had submitted to it.
6. The Trust provided an internal review on 19 June 2020. At this point it accepted the complainant’s identity was genuine but advised it was relying on section 14(1) (vexatious request) to refuse to comply with the request because, it said, it had refused to answer queries about the Hare Psychopathy Checklist – Revised.
7. The complainant requested another review on 19 June 2020.
8. Following the Commissioner’s decision in IC-49190-R6T8 in November 2020, which concerned a third request the complainant had submitted to the Trust, the Trust provided a fresh response to the current request on 18 December 2020. It advised that it was not obliged to comply with the request under section 12(1) of the FOIA.
9. On 20 January 2021 the Trust provided an internal review response. It upheld its position.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 22 December 2020 to complain about the way their request for information had been handled.
11. The Commissioner’s investigation has focussed on whether the Trust is entitled to refuse to comply with the request under section 12(1) of the FOIA. She has also considered the associated duty under section 16(1) of the FOIA to provide an applicant with advice and assistance if it is reasonable to do so.

## Reasons for decision

---

### Section 12 – cost exceeds the appropriate limit

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
13. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.
14. 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 make a notional charge of 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 the Trust. 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.
15. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
16. With regard to the second part of the complainant's request – the number of staff in 2002 who received training in the Hare Psychopathy Checklist – Revised ('Hare PCL: SV') - in its submission to the Commissioner the Trust has confirmed what it advised the complainant. Namely, that its Training department does not keep on its central training system a central record of staff who have had such training. It says this training is not part of the Trust's mandatory or routine training and is specific to particular job roles. Any relevant information about this training would be held in staff members' personnel files. The Trust says it currently has a hybrid of historical paper records for staff, which are secure archived under contract, and electronic files of current staff which was introduced in 2018.

17. The Trust says it currently employs approximately 3,500 staff and has a staff turnover of approximately 50 roles per month. To go back and check 1,711 archived records along with the current records would exceed the applicable cost limit under section 12 of the FOIA. This assumes that all files were available to review and that it took 10 minutes per box of records. The Trust says that this is a “generous” estimation (by which the Commissioner understands the Trust to mean it is an underestimation) as there would be anywhere from 10-25 files per box. But based on that assumption, it would take 285 hours to identify and collate the requested information. There would also be additional time needed to review the electronic records the Trust holds in addition to the archived paper records.
18. With regards to the first part of the request - what the Trust spent on training in the Hare PCL:SV in 2002 – the Trust says it approached its Finance department to check if that department held this information centrally in an extractable format. The Training department confirmed it does not hold this information in a centralized format. In addition it does not hold invoices for more than seven years from the end of the fiscal year the invoices relate too. Because of the uniqueness of the training in question, the Trust says the Finance department did not report on this centrally and suggested that, if appropriate to a job role, details of the cost of training in the Hare PCL:SV may be held in those staff members’ individual personnel files.

*The Commissioner’s conclusion*

19. The Commissioner notes that the complainant’s request concerns one year – 2002 ie 18 years ago at the time of the request. Since the Trust does not keep invoices for longer than seven years from the end of the fiscal year that the invoices relate to, it would not now hold any invoices associated with Hare PCL:SV training. The Trust has also confirmed that its Finance department does not hold this information centrally in any other form. At this point then, if held, information on what was spent on any staff members’ training in the Hare PCL:SV in 2002 would only be held in individual staff members’ personnel files. In which case, the circumstances that the Trust has described in relation to the second part of the request, also apply to this part.
20. With regard to both parts of the request, it could be the case that a member of staff in a particular role at the Trust in 2002 had training in the Hare PCL:SV at that time, and that they still work for the Trust - but in a different role. It would therefore be necessary to review *all* staff members’ personnel files to see if they worked for the Trust in 2002, and to see if they received training in the Hare PCL:SV that year. It would not be enough to simply review files closed in 2002, or files of those staff in a particular role or roles in 2002 or subsequent years. A staff member in a role for which training in the Hare PCL:SV was

appropriate in, for example, 2013, may not have been in that role in 2002. As noted, it would therefore be necessary to review all staff records. The Trust says it holds 1,711 archived paper personnel records. The Commissioner considers that the Trust's estimate of 10 minutes to review each file is credible and that the search for relevant information – on the numbers who had the training in 2002 and the cost of that training - in just the paper records would therefore take 285 hours. And if it took just five minutes to review each file, this work would still take 143 hours; again, well in excess of the cost and time limit under section 12(1). The electronic records would also then need to be reviewed, which would take further time.

21. The Commissioner therefore finds that the Trust is entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

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

22. Section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
23. In its correspondence to the complainant, the Trust made no reference to the duty under section 16(1) – even to say that there was no advice and assistance on refining their request that it could offer the complainant on this occasion. Neither did the Trust address this matter in its submission to the Commissioner, although she had asked it to.

### *The Commissioner's conclusion*

24. However, despite the request being for specific information for one year only, given: the volume of records caught by the request; the way the Trust holds its staff personnel records – in both paper and electronic form - that any relevant information would only be held in these records; and the length of time it would take to review each file, the Commissioner does not consider the complainant's request could be meaningfully refined to bring complying with it within the cost limit. As such, she is satisfied that there was no breach of section 16(1) of the FOIA.

## **Right of appeal**

---

25. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**