

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 September 2022

**Public Authority:** Care Quality Commission  
**Address:** 2 Redman Place  
Stratford  
London  
E20 1JQ

### Decision (including any steps ordered)

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1. The complainant made a request for information relating to hospital inspectors in the hospital directorate in the North East Region. The Care Quality Commission (CQC) refused to comply with the request under section 12 FOIA as it said that it would exceed the cost limit to do so.
2. The Commissioner considers that the CQC was correct to refuse to comply with the request under section 12(1) FOIA.
3. The Commissioner requires no steps to be taken.

### Request and response

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4. The complainant made the following information request to the CQC on 2 March 2022:

"Unless stated expressly otherwise, all requests concern hospital inspectors in the hospital directorate in the North East Region. Where possible it would be helpful if the data could be split per inspector, where relevant.

1. Per inspector, over the last year, how many invitations from local authorities to attend a safeguarding meeting were received? For example, inspector 1 may have received 10 invitations.

2. With respect to each inspector's numbers of invitations above, I would like to know how many invitations were declined with a request for minutes, and how many were accepted and attendance occurred? For example, if there were 10 invitations for inspector 1, they may have attended 5 and asked for minutes instead for 5.
3. Per inspector, for those instances where the inspector chose non-attendance, how many escalated that decision to their manager? For example, inspector 1 chose not to attend 5 meetings. How many of those 5 decisions not to attend were escalated to their manager?
4. Per inspector, over the last year, how many serious incidents were received? For example, inspector 1 received 20 serious incidents.
5. With respect to each inspector's number of serious incidents above, how many Part 1 of the decision tree were completed, excluding those serious incidents where an MRM was taking place. For example, inspector 1 had 20 serious incidents. In how many of those 20 serious incidents did inspector 1 complete Part 1 of the decision tree, excluding those serious incidents cases where an MRM was taking place?
6. Per inspector, over the last year, how many serious incidents from NHS trusts were received that engaged nutrition and hydration?
7. With respect to each inspector's number of serious incidents that engaged nutrition and hydration above, how many Part 1 of the decision tree were completed, excluding those serious incidents where an MRM was taking place?
8. In relation to the serious incidents at (6) above, how many went to an MRM hearing?
9. In relation to (8) above, what was the decision of the MRM? For example, assume an NHS Trust had serious incidents engaging nutrition and hydration. After an MRM, it was decided not to inspect but to continue to monitor the situation. This is the level of information I seek."
5. The CQC responded on 8 March 2022 refusing to comply with the request as to do so would exceed the cost limit under section 12 FOIA. providing information. Following an internal review dated 14 April 2022 the CQC upheld its application of section 12 FOIA.

## Reasons for decision

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### Section 12 – cost of compliance

6. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
7. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. DPP relied on section 12(1) in this case.
8. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for CQC is £450.
9. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for CQC.
10. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
11. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public

authority made a reasonable estimate of the cost of complying with the request.

12. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information. 16. Where a public authority claims that section 12 of 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 FOIA.

**Would the cost of compliance exceed the appropriate limit?**

13. In this case the CQC has explained that:

“In respect of questions 1-3, please note details are not held in reportable format. Each individual inspector would need to manually search and review invitations from local authorities to attend safeguarding meetings. We estimate that performing a search for this information across all North East Acute Hospital NHS Trusts alone would significantly exceed the cost limit.

To respond to questions 4-9 would also require a manual search and review of each serious incident received by each inspector. Please note none of the information requested in questions 4-9 is held in a reportable format and would require manual searches and review to respond to each question in turn.

A sample check carried out to three separate NHS Trusts found an average of 173 serious incidents notified to CQC over a 12-month period. Checks were carried out to one medium sized Acute Hospital Trust, one large Acute Hospital Trust and one Acute Hospital Trust rated “Outstanding”. The North East Acute Hospital Team has responsibility for 24 NHS Trusts, extrapolating this 173 average figure over the 24 Trusts would give a total of 4,152 serious incidents to review.

We estimate that performing a search for information across questions 1-9 would take us significantly beyond the fees limit defined under Section 12 of FOIA. As such we are refusing to respond to any aspect of the request.”

14. In the request for internal review the complainant challenged the time and cost estimate and presented alternative methods for locating, retrieving and extracting the requested information for the CQC to consider.

15. On 14 April 2022, the CQC provided a detailed internal review addressing the complainant's concerns. It explained why the methods described in the time estimate were the most efficient way to locate, retrieve and extract the requested information. It provided the complainant with more detailed information as to the time/cost implications for each part of the request. For example for request 1 it explained that there were 274 safeguarding enquiries between 1 January 2021 and 31 December 2021. It confirmed it would take three minutes to search each to determine whether there were any safeguarding meeting invitations (this equates to 13.5 hours for request 1 alone). CQC confirmed that this estimate was based upon work on previous FOI requests in which it was required to search safe guarding enquiries.
16. CQC accepted that if it conducted the work for part 1 of the request above, further costs would be negligible to comply with part 2.
17. However in relation to the remaining parts of the request it explained why other methods to locate, retrieve and extract the required information suggested by the complainant would not be possible. Furthermore because incidents are not allocated to a particular inspector, it would require significant time (and therefore cost) to locate, retrieve and extract the required breakdown of information given the number of incidents set out in the CQC's original response at paragraph 13 above.
18. The Commissioner therefore considers that the CQC's estimate is reasonable and based upon cogent evidence. To comply with request 1 alone would require 13.5 hours work. It has provided detailed explanations as to the time and cost of complying with the other parts of the request (apart from request 2 which it accepts would be negligible). The Commissioner is satisfied that it would take more than the 18 hours or £450 limit to respond to this request.
19. The CQC was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

20. Section 16(1) of 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 in providing advice and assistance, it will have complied with section 16(1).

21. The Commissioner notes that the CQC advised the complainant that in relation to part 4 of the request:

"...please note we are not be able to provide details by inspector. This is because there have been vacancies/ absences which has meant that inspectors have temporarily covered other workloads for periods of time. We could however provide you with the number of serious incidents by each individual NHS Acute Hospital Trust for question 4 only should you wish.

22. The Commissioner is therefore satisfied that CQC met its obligations under section 16 of FOIA.

## Right of appeal

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23. 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@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)

24. 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.
25. 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**