

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

Public Authority: Northamptonshire Healthcare NHS Foundation Trust

Address: St Mary's Hospital
London Road
Kettering
NN15 7PW

Decision (including any steps ordered)

1. The complainant has requested copies of invoices received by Northamptonshire Healthcare NHS Foundation Trust (the Trust), relating to Annex 6 of the Trust's constitution (relating to the Council of Governors) and the Trust's Nominations and Remuneration Committee.
2. The Commissioner's decision is that the Trust breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days. No steps are required.

Request and response

3. On 8 June 2021, the complainant made the following request for information:

"I have reviewed the website as suggested by you but can find no information that provides the information required. Having consulted an NHS professional I'm advised that:

- Such financial arrangements are based on agreed principles of calculation and I'm requesting details of these and;
 - Copies of invoices received from [the law firm] Hempsons` covering the period September 2019 to date."
4. The Trust responded on 2 July 2021, refusing to comply with the request under section 12 of FOIA on the basis that the cost of complying with the request would exceed the cost threshold of £450. It advised the

complainant that it could provide up to 17 invoices within the appropriate cost limits and asked the complainant to limit the scope of the request by specifying the specific months they wished to receive.

5. On 13 July 2021, the complainant asked the Trust for the following information:

“Further to your response indicating that you can provide, under the Freedom of Information act 17 months worth of Hempsons invoices, I’d request the following:

- October 2018 through to February 2019 inclusive. 5 invoices.
- November 2020 through to March 2021 inclusive. 5 Invoices.”

6. The Trust responded on 9 August 2021, providing the complainant with redacted copies of the requested invoices. It refused to provide the redacted information citing section 43 (commercial interests) of FOIA.

7. The complainant wrote to the Trust again on 16 August 2021 with the following:

“In response to my original FoI request where information was required in relation to myself and relevant Hempsons Annex 6 involvement I was informed that such detail was unavailable. Having reviewed the itemised invoices it is clear that individual entries are referenced. The reference format is exactly the same as referenced correspondence received by myself direct from Hempsons, it is clear therefore that the information I require is available and easily provided.

In the circumstances I’m requesting that this information be provided without further delay and a review undertaken in line with the FoI Team letter.”

8. The Trust provided the outcome of its internal review on 20 December 2021 in which it revised its position, stating:

“Whilst undertaking review we identified through assessing all related documentation that whilst a Section 43(2) exemption was applied to the release of the information to you. We also identified that some individual pieces of advice relating to other data subjects formed the redactions. As a result a Section 40(2) and Section 41 exemptions should also have been applied.”

Scope of the case

9. The complainant initially contacted the Commissioner on 13 January 2022, disagreeing with the public body's refusal to provide the requested information.
10. During the course of the Commissioner's investigation, the Trust sent the complainant a revised response to the request on 25 October 2022.
11. The complainant remained dissatisfied with the response to their request. The complainant stated that they would be content to receive unredacted invoice items relating to Annex 6 or Nominations and Remuneration Committee matters, in accordance with their original request for information. The complainant stated their belief that it had been established that this information was easily available.
12. The Trust sent the complainant a further revised response on 16 January 2023. It provided the complainant with unredacted sections of the invoice items relating to Annex 6 or Nominations and Remuneration Committee (NomRem) matters.
13. The Commissioner contacted the complainant on 19 January 2023 to ask whether they were content with the steps the Trust had taken.
14. The complainant contacted the Commissioner on 24 January 2023, advising that they were unwilling to withdraw their complaint. The complainant stated that they had received the requested information (i.e. unredacted invoice items relating to Annex 6 or Nominations and Remuneration Committee matters), but advised that the requested information had been time critical. The complainant indicated that they believed the delay to have been intentional (we address this point at paragraph 20 of this decision notice) and requested the Commissioner issue a decision notice in relation to the Trust's failure to respond to the request within the statutory time frame set out in FOIA.
15. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

16. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.”
17. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
18. From the evidence provided to the Commissioner in this case, it is clear that the Trust did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Trust has breached section 10(1) of FOIA by failing to respond to the request within 20 working days.

Other matters

Internal review request

19. The Commissioner notes that the time taken for the Trust to respond to the internal review request exceeded 40 working days. Although there is no statutory time set out in FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. The Commissioner therefore recommends that the Trust review the Section 45 code of practice¹.

Complainant's further concern

20. In their representations to the Commissioner, the complainant has stated that the information originally requested was time critical and their belief that the Trust, in conjunction with its legal advisors, sought to avoid providing the information until 23 January 2023. The complainant stated that the legal advisors in question are the same legal advisors whose invoices were the subject of the FOIA request. The

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

complainant has stated their belief that the Trust has deliberately acted to evade the provisions of FOIA.

21. Whilst the Commissioner notes the complainant's concerns, he has not been provided with evidence to suggest that the Trust's failure to respond correctly at the time of the request was in any way deliberate.

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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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Wilmslow
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SK9 5AF