

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2023

Public Authority: Southern Health and Social Care Trust

Address: Ferndale House
Bannvale
10 Moyallen Road
Gilford
BT63 5JX

Decision (including any steps ordered)

1. The complainant requested information from Southern Health and Social Care Trust ("the public authority"). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner requires the public authority to take the following steps:
 - Provide advice and assistance to the complainant to assist in submitting a request potentially falling within the appropriate limit.
3. 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 11 October 2022, the complainant made the following request for information to the public authority:

"I am making a request for all the information under the freedom of information act.

I am asking for all communication in connection with Irish Travellers. Please provide all emails in connection to to irish travellers, between your organisation and the emails below , between these dates from the 1 of April 2022 to 11 of October 2022.

[EMAIL ADDRESS REDACTED]

[EMAIL ADDRESS REDACTED]

[EMAIL ADDRESS REDACTED]

[EMAIL ADDRESS REDACTED]

[EMAIL ADDRESS REDACTED]

This information is for research purposes."

5. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

Reasons for decision

Section 12 – cost of compliance

6. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.¹ The appropriate limit² for the public authority in this case is £450.
7. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained
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¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

that the request centres around communication in connection with Irish Travellers to four email accounts over a period of three months and these email accounts cover three of its Care Directorates (Adult Community Services, Children and Young People Services and Mental Health & Disability).

8. The public authority explained that, in order to determine the length of time it would take to search for, locate and provide the information requested, one department in one of the relevant Directorates undertook a sampling exercise. Fifteen members of staff undertook an exercise to search and locate relevant emails and this took 5 hours and identified over 420 emails. The public authority explained that each email is complex and estimated it would take on average 3 minutes per email to extract from the archive and review. The estimate for this one department would have been 20 hours. The public authority stated that the other Directorates and Departments within scope of the request would have considerably more relevant emails as these would relate to Children's Social Care Services and Mental Health Services. It therefore concluded that the time to identify the emails and compile the requested information would exceed the appropriate limit.
9. The public authority confirmed that although it highlighted that redaction of personal data would be a necessary step to compile the requested information, it had not included this in its time estimates. This was the correct approach as redactions do not count towards the cost estimate under section 12.
10. The Commissioner is satisfied that the public authority's arguments above are justified, because it has explained that to compile the information from relevant emails from just one of the four Directorates within the scope of the request would take 20 hours. Therefore the reasonably estimated cost for obtaining the requested information is clearly in excess of the cost limit.
11. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

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

12. 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 practice³ in providing advice and assistance, it will have complied with section 16(1).

13. The Commissioner notes that the public authority did not make any attempt, neither in its initial response nor its internal review outcome, to advise the complainant how they could refine their request to try to bring it within the cost limit. The Commissioner is therefore satisfied that the public authority did not meet its obligations under section 16 of FOIA. The public authority must now provide appropriate advice and assistance to the complainant.

Other Matters

14. The complainant expressed dissatisfaction that the public authority did not confirm whether it held information within the scope of the request in the first instance. Section 1 of FOIA states that states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them. The Commissioner notes that the public authority could have stated more clearly that it did hold information relevant to the request before it advised that it was relying on section 12.
15. The complainant also expressed dissatisfaction that the public authority did not give them the option to pay for the requested information. Section 13 of FOIA states that public authorities may charge to supply information if it exceeds the cost limit under section 12, but it is at their discretion to do so and they are under no obligation if requested.⁴

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁴ <https://www.legislation.gov.uk/ukpga/2000/36/section/13>

Right of appeal

16. 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

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

17. 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.
18. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF