

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2023

Public Authority: Liverpool University Hospitals NHS Foundation Trust

Address: Prescot Street
Liverpool
Merseyside
L7 8XP

Decision (including any steps ordered)

1. The complainant made a request on 7 July 2022 for the details of 49 specified contracts identified on a spreadsheet provided in response to an earlier FOIA request. The Trust initially refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so. In a previous Decision Notice, under the reference IC-197247-G1W7, the Commissioner found that the Trust had incorrectly applied section 12 FOIA and ordered the Trust to issue a fresh response. The Trust subsequently issued a fresh response providing information in relation to the second part of the request and confirming that no further information was held under section 1 FOIA.
2. The Commissioner's decision is that on the balance of probabilities the Trust does hold further information in relation to this request, specifically the 49 contracts in their entirety. The Trust therefore incorrectly confirmed that no further information was held under section 1(1)(a) FOIA. However the Commissioner considers that it would impose a grossly oppressive burden upon the Trust under section 14 FOIA to comply with the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 7 July 2022 the complainant made the following request for information under the FOIA for (this request followed on from a response to a previous FOIA request made):

“ I request details of the contracts outlined in the invoices or otherwise provide details as to what actual goods and services were provided for the sums involved.” [emphasis added]
5. The Trust issued a revised response on 6 January 2023 (following receipt of the Decision Notice under reference IC-197247-G1W7) providing information in relation to the second part of the request (not underlined above).
6. The complainant requested an internal review. On 10 February 2023 the Trust provided the internal review. It confirmed that no further information was held under section 1 FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way the request for information had been handled, in particular the complainant considers that further information is held by the Trust falling within the scope of the request.
8. The Commissioner has considered whether the Trust holds any further information falling within the scope of the request under section 1(1)(a) FOIA. Furthermore, given previous arguments presented on IC-197247-G1W7 regarding the time it would take the Trust to review the 49 contracts for disclosure as it is likely an exemption would apply to some information (section 43 FOIA – commercial interests) as opposed to releasing the documents in their entirety, the Commissioner has also considered whether section 14 FOIA would be applicable in this case.

Reasons for decision

Section 1

9. Section 1 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.”
10. In this case the Trust provided some information to the complainant relating to details as to what goods and services were provided and the sums involved (part 2 of the request) and confirmed that no further information was held.
11. As previously explained in the previous Decision Notice served under reference IC-197247-G1W7, the Commissioner considers that the first part of the request is for the 49 contracts in their entirety. On the balance of probabilities the Commissioner considers that the Trust does hold the 49 contracts (in full). It was therefore incorrect to confirm that no further information was held under section 1(1)(a) FOIA.

Section 14

12. Section 14 states that:

“(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

13. The Commissioner’s guidance¹ explains that:

“You cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.

Nonetheless, you may apply section 14(1) where you can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on your organisation.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

However, we consider there is a high threshold for refusing a request on such grounds. This means that you are most likely to have a viable case where:

- the requester has asked for a substantial volume of information; **and**
- you have real concerns about potentially exempt information, which you are able to substantiate, if asked to do so by the ICO; **and**
- you cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.

If a refusal leads the requester to complaining to the ICO, we expect you to provide us with clear evidence to substantiate your claim that the request is grossly oppressive. We will consider any requests which are referred to us on the individual circumstances of each case.”

14. In this case, the Trust had previously applied section 12 FOIA to this request due to the time it would take to review the 49 contracts to locate, retrieve and extract the requested information. However because the Commissioner considers that the first part of the request is for the contracts in their entirety, he found that section 12 FOIA had been incorrectly applied.
15. The Trust has also explained that the 49 contracts would contain commercial information (exempt under Section 43 of the FOIA) and it would not therefore be able to release the documents in their entirety. The Trust therefore considers it would still be necessary to review the 49 documents to consider whether material would be exempt and make redactions. As explained in the Commissioner’s guidance, whilst a public authority cannot take into account time for considering exemptions and redacting information under section 12 FOIA, section 14 FOIA may be applicable under these circumstances.
16. In this case the complainant has requested 49 contracts. The Trust has explained that the Assistant Head of Finance (Financial Services), reviewed one sample contract. It contained 229 pages, and it confirmed that the review and scrutiny of this contract in isolation took approximately 2 hours. The Trust said it would be necessary to review and scrutinise every page of the 49 contracts in order to comply fully with the request as the exempt information cannot be easily isolated.
17. The Commissioner considers that the complainant has requested a substantial volume of information. The Trust has conducted a sampling

exercise to determine how long it would take to review a contract to determine where an exemption would apply and to make any necessary redactions. Based upon this, it would equate to 98 hours work.

18. The Trust has confirmed that the 49 contracts would contain material which would be exempt under section 43 FOIA (commercial interests). The Commissioner accepts that the 49 contracts are highly likely to contain material which would be exempt from disclosure under section 43 FOIA.
19. Finally the Commissioner is of the view that potentially exempt material is likely to fall within various different parts of the contracts and so will take time to locate, review and make the redactions. It would not therefore be easy to quickly isolate potentially exempt material.
20. In this case the Commissioner has however balanced the impact of handling the request against its value and purpose in order to determine whether the effect on the Trust is disproportionate.
21. The Commissioner is aware that transparency reports relating to the requested information are published on the Trust's website. In addition to this, in response to a previous FOI request, the Trust has provided information in relation to the 7 highest payments on the March 2021 transparency report and in response to the second part of this request it provided the information in relation to the other 42 payments.
22. Whilst the Commissioner considers that there is a value and purpose behind the request, the information which is publicly available and which has been disclosed goes a significant way to addressing this purpose. That is transparency surrounding the payments/public spending.
23. On balance therefore the Commissioner considers that providing the 49 contracts in full would impose a grossly oppressive burden upon the Trust and it would not therefore be obliged to comply with the first part of the request.

Right of appeal

24. 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

25. 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.
26. 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