

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2023

Public Authority: NHS Business Services Authority

Address: Stella House
Goldcrest Way
Newcastle upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant has requested information about pension entitlement. The above public authority ("the public authority") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12 of FOIA to refuse the request. However, the public authority failed to discharge its duty under section 16 of FOIA to provide advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Either provide the complainant with advice and assistance to help him refine his request such that it falls within the cost limit; or
 - If the request cannot be meaningfully refined, explain why this is the case.
4. 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 the Act and may be dealt with as a contempt of court.

Request and response

5. Prior to 12 April 2023, the complainant made a number of attempts to submit a request for information. On each occasion the public authority asked for further clarity to enable it to identify the relevant information.
6. On 12 April 2023, the complainant wrote to the public authority and requested information in the following terms:

“The requirement is to include all NHS Pensioners in the 2008 scheme hence the time frame is all the years of the 2008 scheme Affected [sic] is a request for the number of NHS Pensioners where their Reckonable pay is less than

 - A number of Pension Benefit Statements that they have received
 - Their salary for the year on on [sic] which their Pension (Reckonable Pay) has been based
 - One or more of their best three consecutive years in the last 10
 - Their Reckonable Pay based on the best three consecutive years in the last 10 years.”
7. The public authority refused the request, relying on section 12 of FOIA in order to do so – a position it upheld following an internal review.

Reasons for decision

8. Section 12 of FOIA allows a public authority to refuse a request for information if the cost of complying with that request would exceed a certain limit – which would be £450 for this particular public authority. Staff time spent on complying must be calculated at a notional rate of £25 per hour – meaning that any request that requires in excess of 18 hours' work will exceed the cost limit.
9. When estimating the cost of compliance, a public authority is only entitled to take account of the time spent identifying whether any relevant information is held and any time spent locating, retrieving or extracting that information.
10. The public authority has explained that the pension scheme has 62,117 members. In order to provide the information that the complainant has asked for, it would need to check each member's record against the four criteria set out by the complainant. It estimated that this would take approximately 30 minutes per member.

11. The public authority also explained that it only stores the outcome of a benefit calculation rather than the specific calculation components. It also noted that some information (such as the figures shown on annual benefit statements), would be recorded as an image file, rather than as searchable data. It confirmed that its estimate has been based on the advice of experienced staff members as to the quickest way of extracting the data.
12. The complainant argued that as the records are held electronically, the public authority must be able to provide the information.

The Commissioner's view

13. The Commissioner considers that the request would exceed the cost limit.
14. It is a common misconception that any records held electronically must be easily searchable and that any form of information they contain must be easy to extract. In practice, this is not always the case and will depend on the manner in which the records are held and the degree to which the records must be manipulated in order to compile the requested information.
15. The public authority has explained how the relevant records are stored. It has also explained that, whilst it does, in theory at least, have the raw data from which the requested information could be compiled, the process of compiling that information would take a considerable amount of time. In particular it has pointed out that, whilst it may have copies of each member's annual benefit statement, the figure would only be contained within that specific file, rather than being recorded on a database in a way that would make it easy to extract. Compiling the withheld information would therefore require a manual check of the annual benefit statements held.
16. The public authority has quoted a figure of 30 minutes per member to extract all of the requested information. The Commissioner notes that, in order to extract the relevant data from each record without exceeding the cost limit, the public authority would have barely more than one second per record to identify and extract relevant information (as well as performing any calculations which might be necessary). He does not consider this feasible.
17. The Commissioner is thus satisfied that the request could not be answered within the cost limit.

Procedural matters

18. Section 16 of FOIA requires a public authority to provide advice and assistance where it is reasonable to do so. The section 45 FOIA Code of Practice states that a public authority's advice and assistance obligation will be triggered when it relies on section 12 to refuse a request. In those circumstances the public authority should either suggest ways in which the requester could refine their request so as to bring it within the cost limit or explain that the request cannot be meaningfully refined.
19. In this case, the public authority did not suggest any way in which the request could be refined – nor did it state that it considered the request could not be refined.
20. Given the breadth of the request and the work involved, the Commissioner is sceptical that the request can be refined sufficiently to bring it within the appropriate limit. He also notes that the public authority is not required to lavish ingenuity on ways in which a particular request could be refined.
21. Nevertheless, he still considers that, if the public authority was of the view that the request could not be meaningfully refined as to bring it within the cost limit, it was under an obligation to inform the requester of that fact. If there were ways of refining the request, these ought to have been suggested.
22. The Commissioner therefore considers that the public authority failed to discharge its obligation under section 16 of FOIA. It must now either provide advice and assistance or explain why none can be provided.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Roger Cawthorne
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Information Commissioner's Office
Wycliffe House
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