

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2024

Public Authority: NHS West Yorkshire Integrated Care Board
Address: White Rose House
West Parade
Wakefield
WF1 1LT

Decision (including any steps ordered)

1. The complainant requested information about applications to the Court of Protection. NHS West Yorkshire Integrated Care Board ('the ICB') provided a response to some of the request but refused to comply with the remainder citing section 12 of FOIA (cost limit).
2. The Commissioner's decision is that the ICB was entitled to refuse to comply with the remainder of the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the ICB complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the ICB to take any steps.

Request and response

4. On 14 September 2023, the complainant made the following request for information to the ICB:

"My understanding is that (1) NHS Bradford Districts Clinical Commissioning Group (CCG) and (2) NHS Bradford City Clinical Commissioning Group (CCG) ceased to exist in April 2020 and was replaced by (3) NHS Bradford District and Craven Clinical Commissioning Group (CCG), which itself ceased to exist on the 1st of July 2022 and was replaced by yourself as (4) NHS West Yorkshire

Integrated Care Board (ICB). Given this fact is accurate, I would like to know the following :

Q1. What date (month & year) was 1 & 2 CCG first established?

Q2. Over the time period commencing from your answer to Q1 up until the start 1st of September this year 2023, and covering the period of all your previous incarnations as 1, 2 & 3 CCGs to your present 4 ICB status as the "scope-period", please can you tell me on how many occasions have you made an application to the Court of Protection (COP) over the scope-period?

Q3. For each Application to the COP over the scope-period, please can you inform me of the reason or justification for making such an application of yours to the COP?

Q4. For each Application to the COP in reply to Q3, please can you tell me the overall financial cost outlay for each Application, broken down into administrative costs, court fees and solicitor or legal costs or any other financial costs incurred?

Q5. For each Application to the COP in reply to Q3, please can you indicate the duration each Application was with the COP from the date of your initial Application to the date the Application was finally terminated?

Q6. For each Application to the COP in reply to Q3, please can you indicate if your Application with the COP had been successful or not?

Q7. For each Application to the COP in reply to Q3, please can you indicate what other parties were involved?

Q8. For each Application to the COP in reply to Q3, how many hearings had taken place over the duration period?

Q9. For each Application to the COP in reply to Q3, how many had reporting restrictions and of those that were publicised please can you make reference to news articles covering your cases at the COP?"

5. The ICB responded on 10 October 2023. It provided a response to the first question and advised that it held relevant information to the remainder of the request, however complying would exceed the appropriate limit and it therefore cited section 12(1) of FOIA.
6. On 6 November 2023, the ICB provided its internal review response. It provided some information for questions three and seven, and maintained its reliance on section 12(1) of FOIA for the remainder of the request.

Scope of the case

7. The complainant contacted the Commissioner on 8 November 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the ICB has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the ICB met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of the 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”).
10. 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. The ICB relied on section 12(1) in this case.
11. 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 the ICB is £450.
12. 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 the ICB.
13. 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.
14. 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.
 15. 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?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the ICB to provide a detailed estimate of the time or cost taken to provide the information falling within the scope of this request.
18. The ICB has stated that information relating to any applications to the Court of Protection are not recorded centrally and are held separately in individual patient files.
19. The ICB explained that the detail requested would require a deep dive into multiple patient records over a number of years, and manual investigation of the specific information requested.
20. In their internal review request, the complainant queried the ICB’s statement that the information was held in individual patient files and reasoned that the information would be held by the ICB’s litigation team. The ICB explained that this was not the case because applications to the Court of Protection are fairly common in a number of cases and, as a result, the process is fairly embedded within normal business arrangements which is why the information is held within patient files.
21. The ICB explained that, for the week in which it provided its internal review response, there were 1961 live patient cases. It estimated that

over the 10-year period specified in the request, approximately 20,000 patients records would need to be manually reviewed in order to identify any information in scope and provide a response.

22. The ICB added that even accounting for the 1961 live cases in that particular week, it estimated it would take at least five minutes to review each patient record and this would take 163 hours in total. The ICB considered that this is likely a low estimate given the size of some records requested.
23. Given the wide time period of the scope of the request and the large volume of patient files that would need to be reviewed, the Commissioner considers that the ICB estimated reasonably that it would take more than the 18-hour limit to respond to the request. The ICB 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

24. 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
25. The Commissioner notes that, in its internal review response, the ICB suggested that the complainant could narrow the scope of their request by reducing the time period. As part of its submission, the ICB confirmed that the complainant had submitted a refined request with a time period of one week, and it had been able to advise the number of applications to the Court of Protection.
26. The Commissioner is satisfied that the ICB met its obligations under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

27. 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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
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Wycliffe House
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