

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2024

Public Authority: Aneurin Bevan University Health Board

Address: Mamhilad House
Mamhilad Park Estate
Pontypool
NP4 0YP

Decision (including any steps ordered)

1. The complainant requested various information in respect of cataract lenses from Aneurin Bevan University Health Board ('the Health Board'). The Health Board refused the request citing section 12(4) (costs exceed the appropriate limit) of the FOIA.
2. The Commissioner's decision is that the Health Board was not entitled to aggregate this request under section 12(4) of the FOIA and that it failed to demonstrate that section 12(1) was engaged in respect of this request.
3. The Commissioner requires the Health Board to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 12 of the FOIA.
4. The Health Board must take these steps within 30 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. On 6 February 2024, the complainant wrote to the Health Board and requested the following information in respect of cataract lenses:

"Please state:
 1. Which lenses were used in cataract replacements last year?
 2. How many of each lens was used?
 3. What make they were?
 4. The written description of how each one differs from other lenses provided by ABUHB operations, which must be given to patients – for agreement to operate."
6. The Health Board responded on 15 February 2024. It stated that it was applying section 12(4) of the FOIA to their latest requests for information which relate to cataract surgery and payments to nursing homes.
7. Following an internal review, the Health Board wrote to the complainant on 21 February 2024. It upheld its original decision to refuse the request on the basis of section 12(4) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 21 February 2024 to complain about the way their request for information had been handled. The complainant considers their request is entirely separate from their previous requests and does not accept that the Health Board can refuse to answer it by amalgamating it with other requests.
9. The scope of the Commissioner's investigation is to consider whether the Health Board was entitled to rely on section 12(4) of the FOIA to aggregate this request for information with previous requests submitted by the complainant. In the event that he decides that section 12(4) applies, he will go on to consider whether the Health Board has provided a reasonable estimate of costs for all requests as required by section 12(1) of the FOIA.

Reasons for decision

Section 12(4) – Aggregation of related requests

10. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)¹ can be satisfied.

11. Section 12(4) of FOIA states:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

12. Similarly, Regulation 5 of the Fees Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

¹ <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

(2) This regulation applies in circumstances in which – (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

13. The Commissioner has reviewed the complainant’s nine requests aggregated by the Health Board. These requests were submitted between 20 October 2023 and 6 February 2024. Although he is satisfied that all nine of the requests were made by the same individual, only seven of them were submitted within the 60 working day time period (11 November 2023) with one of those being a request for an internal review. Therefore, only six of the nine requests (including the request subject to this complaint) fulfil the criteria at regulations 5(1)(a) and 5(2)(b).
14. The Commissioner must now consider whether these six requests relate, to any extent, to the same or similar information. The Commissioner’s view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit and states:²

‘Regulation 5(2) of the Fees Regulations allows you to aggregate requests if they relate “to any extent” to the same or similar information. This is quite a wide test, but you still need to ensure that the requests meet this requirement.’
15. The Commissioner considers that requests are likely to relate to the same or similar information where for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
16. The Health Board has stated that the requests, when aggregated relate to requests for information in respect of contracts, external providers and waiting times across a range of specialities.

² [Requests where the cost of compliance exceeds the appropriate limit \(section 12\) | ICO](#)

17. Having reviewed the wording of the complainant's requests, the Commissioner notes that five of the six requests relate to health care. However, their topics vary from details regarding waiting lists (including for cataract operations), general patient aftercare, but especially in relation to heart attack and stroke patients, and cataract lenses (this request).
18. The Commissioner considers that whilst these requests all relate to various aspects of health care, that requests concerning cataract lenses, waiting lists and patient aftercare are not indicative of an overarching theme, or are sufficiently similar in content. Neither is there any evidence that the complainant has expressly linked the requests. Indeed, as specified in paragraph 8 of this notice, the complainant considers it an entirely separate request.
19. The Commissioner, therefore, finds that the Health Board was not entitled to rely on section 12(4) of the FOIA in respect of any of the requests it considers appropriate for aggregation.
20. However, he has gone on to consider whether section 12(1) applies to the request that this complaint relates to.
21. Section 12(1) of the FOIA:

"... does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."
22. The Fees Regulations sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request, meaning section 12(1) in effect provides a time limit of 18 hours' work.
23. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
24. The Commissioner notes that the Health Board did not provide an estimate of the costs of complying with this, or any of the other requests it was looking to aggregate.

25. The Commissioner made it clear in his letter to the Health Board that his approach is give a public authority one opportunity to justify its position to him and that it should fully set out its final position in its response. With the lack of information to support its position, the Commissioner has no other option but to conclude that the Health Board has not demonstrated that section 12(1) applies to this request. Additionally, had it been entitled to rely on section 12(4) in respect of the other requests, his decision in respect of section 12(1) would inevitably have been the same given the absence of an estimate of costs.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Catherine Dickenson
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Water Lane
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