

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2014

Public Authority: Department of Health
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. The complainant has requested information about any disciplinary action taken against employees of the former Stockport PCT. The Department of Health (DoH) refused to provide the information under section 12(1) on the basis that it would exceed the cost limit to locate and retrieve the information.
2. The Commissioner's decision is that DoH was entitled to rely on section 12(1).
3. The Commissioner does not require the public authority to take any further action on this matter.

Request and response

4. On 22 November 2013, the complainant wrote to the DoH and requested information in the following terms:
 - "1) What were/are the names of the Chief Executive, Board of Governors, and HR Personnel Director, of Stockport PCT in 2010 & 2011?
 - 2) Who, or what designated level of Human Resources personnel, usually writes references for current and ex, Stockport PCT employees?

- 3) In accordance with the Data Protection Act 1998 and the Department of Health's Data Protection/Retention Policy and Procedure, what are the, manually, and electronically, recorded optional and mandatory pieces of information that are kept in, and used, by the HR personnel office when/in writing a job reference about a current, and ex, employee?
- 4) In each year from 2006-2010, how many Stockport PCT employees were, (pursuant to the invocation of the Disciplinary Procedure, of allegations for a 'Failure to perform work duties' or some other failure):
- i) summarily dismissed?
 - ii) given a warning?
 - iii) given some other disciplinary sanction?"
5. All Primary Care Trusts (PCTs), including Stockport's, were abolished on 1 April 2013. Many members of staff from those Trusts would have transferred to the bodies which took over from the Trusts. However the DoH became responsible for the personnel records of the staff who did not transfer.
6. The DoH responded on 20 December 2013. In respect of the information requested at point 1 it provided links to where this information could be accessed on the internet and advised the complainant that, as this information was publicly available, it was exempt under section 21 of FOIA. It sought clarification as to what information was being sought in the second and third parts of the request. Upon clarification these requests were treated as new requests. The DoH's handling of these refined requests has subsequently become the focus of a separate complaint to the Commissioner.
7. The DoH refused to provide the information requested at point 4 under 12 on the basis that complying with the requests would exceed the appropriate limit. The appropriate limit is in effect a cost limit, if complying with a request would exceed the cost limit, a public authority is entitled to refuse the request.
8. The complainant requested an internal review the DoH's application of section 12(1). The DoH provided the complainant with the outcome of its internal review on 22 January 2014. It continued to rely on section 12(1) to refuse part 4 of the request.

Scope of the case

9. The complainant contacted the Commissioner on 17 February 2014 to complain about the way her request for information had been handled.
10. The Commissioner considers that the matter to be decided is whether the DoH is entitled to rely on section 12(1) to refuse part 4 of the request.

Reasons for decision

11. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request if the authority estimates that the cost of doing so would exceed the appropriate limit. The appropriate limit itself is set out in Statutory Instrument 2004 No.3244 – The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
12. These regulations set the appropriate limit for central government organisations at £600. The regulations also describe the activities involved in dealing with a request which can be taken account of when estimating the cost of complying with a request. These activities are limited to determining whether the information is held, locating the information or a document containing it, retrieving that information or document and extracting the information from that document. To the extent that the cost of carrying out any of these activities is attributable to staff time, those costs are calculated at a rate of £25 an hour. This effectively means that if the public authority estimates that it would take more than 24 hours of staff time to comply with the request, it is not obliged to provide the information.
13. It should be noted that the DoH does not hold the personnel files of all the staff who used to be employed by Stockport PCT. It only holds the files of those staff who did not transfer to the body which took over from the Trust. Nevertheless the DoH does hold some information relevant to the request and therefore considered whether it could respond to the request, based on the information it does hold, within the appropriate limit.
14. The DoH has explained that on receiving the request it first searched its electronic archive records of Stockport PCT for any centrally collated disciplinary records. It went onto search all the electronic data transferred from the PCT. This included any reports, meeting minutes and human resources records. The electronic records were searched using the following key words:
 - HR Annual,

- Annual report,
 - Board paper
 - Dismissed
 - Dismissal,
 - Disciplinary and
 - Failure to perform.
15. The DoH has informed the Commissioner that these searches failed to yield any results relevant to the request. The Commissioner is therefore satisfied that the DoH does not hold any relevant records in an electronic format. This means that any information that the DoH does hold will be contained in manual records.
16. Initially the DoH used a high level inventory of the files it had inherited from Stockport PCT to identify around 100 boxes which could contain the personnel files holding the requested information. Six of the boxes had already been retrieved in order to deal with a separate request and these were used to conduct a sampling exercise. It was calculated that, collectively, the personnel files in each box contained a total of between 1500 and 2000 pages. The DoH has explained that files did not follow any standard format which would have allowed disciplinary records to be easily identified. This meant that the DoH had to go through each file in its entirety. The DoH read the papers in one file for one hour and from this concluded that it took an average of 2 minutes to read each page in sufficient detail to determine whether it held information relevant to the request.
17. Based on this exercise, the DoH estimated that just to search the information in one box would take 50 hours as follows:
- 1500 pages X 2minutes per page = 3000 minutes / 60 = 50 hours
- It should be noted that this was based on the lower estimate of the number of pages per box.
18. At the internal review stage the DoH discovered a more detailed inventory of Stockport PCT's records. This enabled it to reduce the number of boxes that needed searching down to just 20. Furthermore each of those boxes contained only 1000 - 1500 pages. The DoH now estimated that it would take only 33 hours to search each box. This is again based on the lower estimate of paged per box:

1000 pages x 2 minutes per page = 2000 minutes / 60 = 33hrs 20 minutes.

19. This revised estimate would mean that the time taken just to search the 20 boxes, ie $20 \times 33 = 660$ hours, would still be far in excess of the appropriate limit, which is effectively 24 hours. It should be noted that this estimate does not take account of the time it would take to retrieve all 20 boxes, which may not be great. Nor does it take account of the time it could take to extract the information from the files in those boxes in order to provide statistics on each form of disciplinary action the complainant was interested in.
20. The Commissioner has considered these estimates and in particular the time of 2 minutes which the DoH estimates it would take to read each page in the necessary detail. However even if this was significantly reduced to just 30 seconds a page, it would this would still exceed the appropriate limit to go through all 20 boxes:

1000 pages x $\frac{1}{2}$ minute per page = 500 minutes /60 = 8 hours 20 minutes per box x 20 = 166 hours and 40 minutes.

21. In any case the Commissioner is reluctant to challenge the reliability of the DOH's estimate of 2 minutes a page as it appears to be the product of a very practical sampling exercise.
22. In light of the above the Commissioner is satisfied that the cost of complying with the complainant's request would exceed the appropriate limit. The DoH is entitled to refuse the request under section 12(1) of FOIA.
23. For completeness it should be noted that following the internal review the complainant wrote to the DoH to enquire whether it had searched Stockport PCT's annual reports or the minutes of the meetings of its Board of Governors. The DoH responded that it had searched for collated disciplinary figures in annual reports, minutes of board meetings and human resource documents. This included searches of both the information it held electronically and as hard copies. These searches did not reveal any relevant information. The DoH confirmed it had taken these steps to the Commissioner. The Commissioner is therefore satisfied that the only way the DoH could find the requested information would be to search the manual records it held in the manner described above.

Section 16 - advice and assistance

24. When a public authority relies on the appropriate limit to refuse a request it has a duty, under section 16 of FOIA, to offer advice and assistance aimed at helping the applicant make a fresh request which could be complied with within the appropriate limit.
25. Section 16 states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable, to those who have made requests to it. That advice has to be in accordance with the code of practice for dealing with requests, issued under section 45 of FOIA.
26. The section 45 code says, at paragraph 14, that a public authority,

“... should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.”
27. When initially refusing the request on the 20 December 2013 the DoH simply advised the complainant that the cost of complying with her request would exceed the appropriate limit and that, unfortunately, it was unable to offer advice on how the request could be refined in order to ensure it could be answered within that limit. Based on the estimate that the DoH was relying on at that time, it would only have been able to search half of one of the 100 boxes that it thought could potentially hold the requested information, within the cost limit. It could not have been certain whether such a search would have found any relevant information. Furthermore it should be remembered that the complainant was seeking information on all of Stockport PCT's former employees, whereas the DoH only held the records of those who did not transfer to the Trust's successor. It is understandable that, based on the estimate it was then working on, the DoH did not think it could provide any meaningful statistical information to the complainant within the appropriate limit.
28. The Section 45 Code requires a public authority to indicate what if any information could be provided within the appropriate limit. The problem in this case is that it is not possible to refine the request so that it seeks less information in a way that would allow it to be answered within the appropriate limit. Nor is it possible to refine the request so it better targets the information sought. It should be noted that the DoH has explained to the Commissioner that the files were not arranged in any defined date format. The inventory to the records simply provided generic descriptions, for example, 'HR records'.
29. The only way to bring the request within the appropriate limit would be by reference to the number of boxes searched rather than by reference

to the characteristics of the information itself. As explained in the Commissioner's guidance, '[Recognising a request made under the Freedom of Information Act](#)', the Commissioner does not consider a request defined by the extent of the search that the applicant wishes the public authority to conduct, to be a valid request, for example a request to search the first half of the first box of personnel files located by the DoH would not be a valid request.

30. At the internal review stage the DoH was able to use a more detailed inventory of the records it had inherited to reduce the number of boxes that would need to be searched. Even so, only a fraction of one box could have been searched within the appropriate limit. More importantly, the problem remained that the DoH would only be able to help the complainant refine her request by reference to the scope of the search and not by reference to the characteristics of the information sought. Again, a request couched in these terms would not be a valid request.
31. At the internal review stage the DoH did explain in detail how it had estimated that complying with the request would exceed the appropriate limit. This would have helped the complainant understand the difficulties in complying with her request and to avoid the frustration of making further, futile, attempts to narrow her request. The Commissioner would recommend that if a public authority refuses a request under section 12 it always provides a breakdown of how the cost of complying with the request would exceed the appropriate limit.
32. In light of the above the Commissioner considers it was reasonable for the DoH to conclude that it could not suggest any meaningful way for the complainant to refine her request. Furthermore at the internal review stage it did provide her details of its estimate. The Commissioner finds that, to the extent that it was reasonable to expect the DoH to do so, it has fulfilled its obligations to provide advice and assistance under section 16.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.

35. 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

Pamela Clements
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