

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

Public Authority: East of England Ambulance Service NHS Trust

Address: Whiting Way
Melbourn
Cambridgeshire SG8 6EN

Decision (including any steps ordered)

1. Through ten requests, the complainant has requested information from East of England Ambulance Service NHS Trust ('the Trust') about its lease cars. The Trust directed the complainant to its website where it said some of the requested information is published. It subsequently confirmed it is relying on section 21 (information already accessible to the applicant) with respect to this information. The Trust applied section 22 (information intended for future publication) to other information.
2. The Commissioner's decision is that:
 - Section 21(1) is not engaged with respect to requests 4, 5 and 8.
 - Section 22(1) is not engaged with respect to requests 1, 2, 6, 7, 9 and 10.
 - The Trust has breached section 1(1) with respect to request 3 as it has not confirmed to the complainant that it holds this information or communicated it to her.
 - The Trust has breached section 10(1) with regard to the ten requests.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:

- Issue fresh responses to requests 1, 2, 4,5, 6, 7, 8, 9 and 10 that comply with section 1 of the FOIA.
 - Issue a response to request 3 that complies with section 1 of the FOIA.
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. On 4 April 2017, the complainant wrote to the Trust and requested information in the following terms:

"1. A list of all the lease cars you have in the Trust, by make and model.

2. The total cost to the Trust for the 2016 - 17 financial year for all lease cars (inc all costs incurred as a total).

3. A list of all the lease cars (make and model) that have had tow bars attached for personal use.

4. A list of all the current Directors lease cars (make and model) - including the vehicle(s) leased to the CEO. For each vehicle please state the percentage personal contribution that is made (if non, please state that).

5. The number of lease cars provided to Directors that are for work use only and the number that are also for personal use.

6. The actual total cost to the Trust for the 2016 - 17 financial year (inc insurance, running costs etc) for all Directors cars (inc CEOs).

7. A list of all the lease cars (make and model) provided to band 8 managers, broken down into the pay level in band 8 (a,b,c,d).

8. Please provide the number of lease cars provided to band 8 managers that are work only use and the number that are also for personal use.

9. The actual total cost to the Trust for the 2016 - 17 financial year (inc insurance, running costs etc) for all band 8 managers lease cars).

10. A list of all the lease cars that have been leased by the Trust over the past 6 months."

6. The Trust responded on 10 May 2017. It referred the complainant to its published Business Travel Policy. Without referring to any of the ten requests specifically, the Trust went on to say it did not hold 'this information' in the format requested and directed the complainant to its published Disclosure Log where it said information about lease cars was published. It said that information about the Director's remuneration was exempt from release under section 22 – it is not clear what specific request the Trust was referring to here.
7. The Trust provided a review on 15 June 2017. It acknowledged it had breached section 10(1) of the FOIA as it had not provided a response to the complainant within 20 working days of receiving her request.
8. With regards to requests 1, 2 and 7, the Trust said it had published the list of lease cars by make and model last year on its Disclosure Log. It said additional webpages were in the process of being created where the Trust intended to publish information that is frequently requested through the FOIA. These would include lease car details.
9. The Trust said that information on the total cost to it for 2016-2017 for all lease cars (request 2) is also provided in the same response published on its Disclosure Log to which it had previously directed the complainant. It acknowledged that it had not made it clear that this information was planned for renewal and republication in the future and that section 22 therefore applied to this request.
10. Regarding requests 4 and 6, the Trust said its annual report for 2015-2016 shows the car benefit charges as a 'Benefit in Kind' in the table entitled 'Salary and Pension Entitlements of Senior Managers'. It again said that this information would be renewed and republished for 2016-2017 shortly and will be published on its website once finalised. It confirmed that it therefore considered that it had correctly applied section 22 to these requests.
11. In relation to requests 5 and 8, the Trust said its Business Travel Policy contains information on how lease cars can be used and that the Policy also applies to the Trust's Directors and Band 8 Managers.
12. Finally, the Trust said it was planning to publish the information requested in requests 9 and 10 on the new website pages and that it was therefore relying on section 22 for these requests. It acknowledged that its original response had not been clear on this point.

13. To summarise, the Trust's position appeared to be that section 22 applied to requests 2, 4, 6, 9 and 10. The Trust did not provide any associated public interest arguments to support its reliance on section 22. It appeared to say that the information relevant to requests 1, 5, 7 and 8 was already published. It did not refer to the associated FOIA exemption: section 21, with regard to these requests. The Trust did not provide a response to request 3.

Scope of the case

14. The complainant contacted the Commissioner on 30 May 2017 to complain about the way her requests for information had been handled.
15. She was not satisfied with the length of time it had taken the Trust to respond to her requests. She also disputes that some of the information she has requested has been published and disputes the Trust's reliance on section 22 with regards to other of her requests. The complainant also still required a response to one of her requests.
16. During the Commissioner's investigation, the Trust confirmed that it was relying on section 21 of the FOIA in respect of requests 4, 5, 8. The Commissioner understands that the Trust is relying on section 22 with regard to requests 1, 2, 6, 7, 9 and 10.
17. The Commissioner's investigation has focussed on whether the requests are exempt from disclosure under either section 21(1) or 22(1). She has also considered whether the Trust complied with section 1(1) with regard to one of the requests and section 10(1) with regard to all ten.

Reasons for decision

Section 1 – general right of access to information

18. Section 1(1) says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
19. The Trust has acknowledged that it has not complied with section 1(1) with regard to request 3 and indicated to the Commissioner that it could release this information to the complaint. On 6 October 2017, the Commissioner advised the Trust to do so but the complainant indicated to her on 16 October 2017 that she had not had a response to this request. The Commissioner must therefore find that the Trust has breached section 1(1) with regard to request 3.

Section 10 – time for compliance

20. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days following the date of receipt of the request.
21. The Trust has breached section 10(1) with regard to all the requests. It responded to nine of them outside the 20 working days and has yet to respond to one of them.

Section 21 – information that is already reasonably accessible to the applicant

22. Section 21(1) says that information that is already reasonably accessible to the applicant is exempt information.
23. With regard to requests 4, 5 and 8, in its submission the Trust has told the Commissioner that the list of all vehicles leased to staff, and used by staff, is available on the Disclosure Log and that the Annual Report for 2015-2016 shows the car benefit charges. It says that details on which lease cars are for work use or personal use (request 5) are also available on its website in the Trust's Business Travel Policy; a Policy that applies to all staff including Directors and Band 8 staff.
24. However, during the Commissioner's investigation the complainant confirmed to her that the *specific* information she requested in requests 4, 5 and 8 are not published either in the Trust's Disclosure Log, published 2015-2016 Annual Report or Business Travel Policy.
25. With regard to request 4 specifically, the complainant has told the Commissioner that the Annual Report does contain the total taxable benefits costs for each Director but it does not set out if this is the cost of lease cars. She says that the make and model of the Directors' lease cars is also not published. By way of a test, the Commissioner has reviewed the Trust's Business Travel Policy herself and notes that information that addresses request 5 specifically, for example, does not appear to be published in it.
26. The Commissioner is not persuaded that the *specific* information the complainant has requested in requests 4, 5 and 8 is already reasonably accessible to her. She therefore finds that the Trust incorrectly applied section 21(1) to these requests.

Section 22 – information intended for future publication

27. Section 22(1) of the FOIA says that information is exempt information if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
28. Section 22(1) is subject to the public interest test; that is if the Commissioner finds that the exemption is engaged, she must consider whether, despite finding it exempt information under section 22(1), there is a greater public interest in disclosing the information or whether the public interest favours maintaining the exemption.
29. In order to determine whether section 22(1) is engaged the Commissioner generally considers the following questions:
- When the complainant submitted the request, did the authority intend to publish the information at some date in the future?
 - If so, had the authority determined this date when the request was submitted?
 - In all the circumstances of the case, was it 'reasonable' for the authority to withhold the information until some future date (whether determined or not)?
30. The Trust is relying on section 22(1) with regard to requests 1, 2, 6, 7, 9 and 10.
31. With regard to requests 1 and 7, the Trust has told the Commissioner that it intends to publish this information on the new web pages it has created. For the remaining four requests to which it has applied section 22(1), the Trust has indicated that the information is routinely published in its Annual Report and, again, that more information will be published on its new webpages.
32. The complainant disputes that the Trust intended to publish this information. She has noted that it has not been disclosed in the 2016-2017 report that is now published, nor is it in the Disclosure Log or Business Travel Policy.
33. For section 22 to be engaged, the settled intention to publish the specific information requested must have existed at the point that the request was received. The Commissioner asked the Trust if it was able to provide evidence that, at 4 April 2017, it had this settled intention

with respect to the specific information requested in requests 2, 6, 9 and 10 but the Trust was unable to provide any. Neither has it provided any evidence with regards to requests 1 and 7.

34. The Trust may now be intending to proactively publish more information than it has done previously, including information within the scope of the complainant's requests. However, this intention appears to have come about as a result of this request, and others. The Commissioner has not been persuaded that the Trust intended to publish the specific information requested at the point it received the above six requests. She therefore finds that section 22(1) is not engaged to the six requests and it has not been necessary to consider any public interest arguments.

Right of appeal

35. 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@hmcts.gsi.gov.uk

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

36. 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.
37. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF