

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 November 2021

**Public Authority:** Yeovil District Hospital NHS Foundation Trust  
**Address:** Higher Kingston  
Yeovil  
BA21 4AT

#### **Decision (including any steps ordered)**

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1. The complainant has requested a range of information associated with COVID-19 and personal protective equipment. Yeovil District Hospital NHS Foundation Trust ('the Trust') has refused to comply with the request under section 12(1) of the FOIA (cost exceeds the appropriate limit).
2. The Commissioner's decision is as follows:
  - The Trust is entitled to refuse to comply with the request under section 12(1) of the FOIA, but it contravened its obligation under section 16(1) of the FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
  - Offer the complainant advice and assistance on how he might refine his request to bring compliance within the cost limit.
4. The Trust must take this step 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

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5. On 15 March 2021 the complainant wrote to the Trust and requested information in the following terms (with numbering corrected where necessary):

"Please disclose Yeovil IR–incident reporting forum

1. Any IR Yeovil employee because of non-adherent to PPE guidelines
2. Any IR Yeovil employee adhering to infection control
3. Any IR submitted as "near miss"
- 4 Any IR contains allegations of patients safety or
6. ALL IR that has been investigated no matter what the reason for reporting

[7] 1. Was there a local shortage of XXL Gowns, N95 masks in April and May 2020?

[8] 1. How many XXL PPE gowns did the hospital have at the outbreak of the Covid 19 pandemic? And why there was a shortage in the ICU, A&E and anaesthetics department of disposable Gowns until 14.05.2020 when washable gowns arrived?

[9] 1. How many XXL PPE gowns did the hospital have in April and prior to 14.May. 2020?

[10] 1. Was there a local shortage of XXL PPE gowns in April and May 2020?

[11] 1. How many N95 masks did the hospital have at the outbreak of the Covid 19 pandemic?

[12] 1. How many N95 masks did the hospital have in April and May 2020?

[13] 1. Was there a local shortage of N95 masks in April and May 2020?

[14] 1. Were hospital staff required to enter red zones to treat Covid patients without adequate PPE?

[15] 1. How many complaints were raised either by hospital staff or members of the public about the lack of PPE in April and May 2020?

[16] 1. What is the proportion of obese / XXL-sized hospital staff?

[17] 1. How many disciplinary investigations were conducted for "poor compliance with infection control" during 2020

[18] 1. How many hospital staff tested positive for covid or had at least one period of self-isolation in 2020?

[19] 1. How many hospital staff died of Covid 19 in 2020?

[20] 1. How many hospital staff was treated in the hospital for Covid 19 in 2020?

[21] 1. How many reports were made to the General Medical Council by the hospital for not donning appropriate PPE during 2020?

[22] 1. How many reports were made to the Nursing and Midwifery Council by the hospital for not donning appropriate PPE during 2020?

[23] 1. How many allegations were made against hospital staff involving the provision of information to journalists in 2020?

[24] 1 What were infection control measures in respect of Covid 19 and PPE and when were they put in place?

[25] 1. How many concerns were raised by hospital staff of members of the public were made about the handling of the Covid 19 pandemic and what were they (in summary)?

[26] 1. How many Employment Tribunal claims and/or ACAS Early Conciliation negotiations have been issued against the Hospital in 2020 and 2021? What proportion refers to PPE?

I would like the above information to be provided to me as [paper or electronic copies, audio-tape version or a opportunity to view]. Obviously electronic copies are preferable

If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary?

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential such an agreement has not been signed."

6. The Trust responded on 17 March 202. It refused the request under section 12 of the FOIA. The Trust asked if the complainant would like to refine his request to bring complying with it within the cost limit.
7. Following an internal review the Trust wrote to the complainant on 28 May 2021. It maintained its reliance on section 12 of the FOIA. The Trust noted that the complainant had not submitted a refined request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 29 March 2021 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Trust is entitled to rely on section 12(1) of the FOIA to refuse the request and whether it contravened its obligation under section 16(1).

## Reasons for decision

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### **Section 12 – cost exceeds appropriate limit**

10. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
11. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.
12. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Trust. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
14. In its submission the Trust has provided the Commissioner with a cost calculation spreadsheet for the time it has estimated it would take to respond to each of the 26 questions it has identified within the request. The spreadsheet includes a detailed estimate of the time/cost to provide the information falling within the scope of each question and a description of the nature of the type of work that would need to be undertaken.
15. The Trust's estimates range from half an hour for, for example, questions 21-23 to one hour for, for example, questions 11, 12 and 13 to seven and a half hours for question 24. In the case of question 24, the Trust has explained that addressing this question would involve

liaising with infection teams to review, check and collate information in one central form. Together, the Trust has estimated that it would take 33 hours to comply with the entire request at a cost of £825.

16. The Trust says it has based its estimates on the expert knowledge of the Trust's systems and processes alongside consideration of previous FOIA requests. The estimate was completed in conjunction with the relevant teams and was based on the quickest method of gathering the requested information.
17. The Commissioner considers that the Trust's estimates are reasonable and that, if anything, the Trust has possibly underestimated the time it would take to comply with some of the questions. Given the number of questions included in the request, the breadth of the questions, the number of different teams involved and the information systems that would need to be interrogated, the Commissioner is satisfied that complying with the request would exceed the appropriate cost and time limit and that the Trust is entitled to rely on section 12(1) of the FOIA to refuse to comply with it.

### **Section 16 – advice and assistance**

18. As noted, section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it. This includes helping an applicant to refine a request, if that is possible, so that it can be dealt with within the appropriate cost limit.
19. In its initial response to the request, the Trust invited the complainant to submit a refined request, although did not suggest how his request might be refined.
20. In its submission to the Commissioner the Trust has told her that it could have offered the complainant further advice and guidance and that it considered it failed to comply fully with section 16.
21. The Trust considers that it could have offered the complainant more advice and assistance. The Commissioner considers that the Trust could, for example, have provided the complainant with a cost breakdown such as it has now provided to her. This would have enabled the complainant to submit a new request that focussed on those questions or specific topics in which he was particularly interested and with which the Trust could comply within the cost limit. As such, the Commissioner finds that the Trust contravened its obligation under section 16(1) of the FOIA on this occasion.

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**