

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 January 2022

Public Authority: University Hospital Southampton NHS
Foundation Trust

Address: Tremona Road
Southampton
SO16 6YD

Decision (including any steps ordered)

1. The complainant has requested from University Hospital Southampton NHS Foundation Trust (the Trust) information about the cost of translation services over a five year period and the total budget for other items for the organisation over the same timeframe. The Trust stated that it did not hold information regarding the first part of the request and it refused to provide information regarding the second part of the request because it considered it to be publicly available information under section 21 of the FOIA. Some months later the Trust provided information in response to the first part of the request.
2. The Commissioner's decision is that the Trust has breached sections 1 and 10 of the FOIA because it did not provide information to which the complainant was entitled within the legislative timeframe of 20 working days.
3. The Commissioner does not require the Trust to take any further steps.

Request and response

4. On 5 February 2021, the complainant wrote to the Trust and requested information in the following terms:

"I would like to make a request for information under the Freedom of Information act regarding the following:

*1. The **spending per financial year on translation services (written) and interpreting services (oral)** for your organisation over each of the following 5 financial years: 2015/2016, 2016/2017, 2017/ 2018, 2018/ 2019, 2019/ 2020, as well as the languages involved. Please do not include data regarding the spending on services for the deaf and blind (such as sign language interpreting or Braille).*

*2. The **total budget for your organisation** for each of the 5 financial years the information above is provided on, for all expenses not just for translation and interpreting services, i.e. to include all expenses such as salaries, utilities, equipment, consumables etc., with only the total figure given, no breakdown necessary. For example, I assume the total budget would be a few dozen or hundred million pounds per financial year. This is so that I can calculate the translation and interpreting spending as a percentage of the organisation's total budget (which I suspect would be around or under 0.1%). The data will be compiled, analysed and published on [link provided].*

The above data and subsequent Analysis will be part of my research and published on the above website. This means it would be available for free to anyone, so not used commercially. Can you please confirm this is okay from a copyright point of view?

*I would appreciate it if you could fill in and return the attached Excel document with the information requested (only the first tab, named **Data**). The second tab, named **Example**, is just an example of what I am looking for in terms of the information provide.*

If there is anything unclear in my request or would like more information regarding the purpose of my research, please let me know, I would be happy to clarify."

5. The Trust responded on 26 February 2021. It stated that it did not hold the information relating to part one of the request as it did not have an accurate recording of spend prior to the beginning of the then current

financial year (2020/2021) as a large proportion of its interpreting/translating services had been provided by a mixture of volunteer services and staff on existing duties who assisted their colleagues with these services on an ad hoc basis. The Trust explained that usage had not been centrally recorded.

6. The Trust stated that the information regarding part two of the request was publicly available on its website and therefore exempt under section 21 of the FOIA (information accessible by other means).
7. The complainant replied on the same day, suggesting how the information could be located and provided a possible refinement/narrowing of her request as follows:

"How much did your organisation spend on interpreting services (oral) in the financial years 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020? Please mention whether it includes or excludes British Sign Language (BSL). Ideally, I would prefer the spending without BSL, but do let me know what data you can provide."

8. The Trust's immediate response restated that the information was not held.
9. At that point (26 February 2021) the complainant requested the following information:

"Can I please get a copy of all FOI requests & responses related to interpreting or translation services you received since April 2016?"

10. On 26 March 2021 the Trust responded to this request, later providing some information it had failed to attach after the complainant had reminded the Trust.
11. On 27 March 2021 the complainant pointed out that there was contradictory information in the responses that had been provided and she asked for clarification.
12. The Trust responded on 29 March 2021 and said that it did not hold accurate data to any level for previous years. The Trust stated that staff who had dealt with these previous requests had left and that the request was closed and would not be reopened.
13. On the same day the complainant responded, saying that she understood the pandemic situation and that staff had left but she still felt that the information could be provided. She asked either for the data or the contact details for internal review.

14. The Trust responded stating that the request had been fulfilled but that it had stopped providing figures at a certain point because the figures were not accurate to any meaningful level.
15. On 29 March 2021 the complainant restated her request as a series of questions:

"What I need is the spending as recorded by your financial system. So if you have in-house employees (translators or interpreters) or external providers of such services then I would need to know how much was actually spent in total/together.

I don't need the spending per language or per provider just the total amount per year for those 5 years as per my request. I have also provided an example in the format I need in the request I sent initially (FOI ref 7226 - not sure why I was then given a different number). Just to rephrase my request, in case the below might be a bit clearer:

1. How much did your organisation spend on translation services (written) in the financial years 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020?

2. How much did your organisation spend on interpreting services (oral) in the financial years 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020?

For the above questions (question 1 + question 2), if your records give a total figure for translation and interpreting and you cannot give separate figures, please mention this in your reply.

For the interpreting spending (question 2), please mention whether it includes or excludes British Sign Language (BSL). Ideally, I would prefer the spending without BSL, but do let me know what data you can provide.

It's the same information I am asking, and feel free to refer to the Excel file sent initially."

16. On 30 March 2021 the Trust acknowledged this email as a new request. At this point, the complainant was given a third reference number.
17. The following day the complainant said that it was the same data and the same request and asked again for internal review details.

18. On 1 April 2021, the Trust stated that this was a new request as the previous requests had been answered. The complainant was asked what request/s she wanted reviewing.
19. On 7 April 2021 the complainant asked for an internal review for the three request numbers she had been given. She said that, despite having been given separate request numbers they had, in fact, been an attempt on her part to get the initially requested information or to ask for clarification. The reason she gave for requesting a review where the request was initially refused on the grounds of information not being held, was because she believed that previous disclosures proved it was held and readily available, albeit partially. She said that the Trust had failed to assist her in locating any information. The complainant also contended that the Trust had failed to provide contact information or to inform her about the procedure to ask for an internal review. Despite her repeated requests for the contact details of the person to contact for internal review, the Trust had ignored it. The complainant was concerned by the multiple reference numbers for what she believed to be a single FOI request which had complicated matters unnecessarily. Some of the issues she raised were customer service as opposed to FOI issues.
20. On 12 May 2021, the Trust provided an internal review. It explained that it did "*not record the use of translation services to a finite level*" as the Trust did not "*hold information relating to some aspects of the service/cost*". The Trust stated that the figures should have been provided. It also explained that when the complainant had asked again for a copy of all responses relating to translation costs these were provided and the responses included costs. The Trust acknowledged that this was not consistent with its previous responses.
21. The Trust then provided a table showing the spend for 2015/16 to 2019/20 which it accepted should have been provided in response to the complainant's initial request. It was explained that, "*The inconsistencies in the amount spent on translation services relate to the way in which costs were historically recorded by staff.*" The information it provided was based on previous responses and might not reflect the specific spend the complainant requested "*but more generic requests on translation services*". However, the spend for 2018/19 and 2019/21 is for all translation services and could not be broken down further.
22. The Trust also acknowledged that when it had exempted part two of the request where the complainant had asked for the total budget for the organisation under section 21, it had not provided a link to the specific Finance web page but just to its homepage. Therefore the review provided the specific link.

23. Additionally, the Trust acknowledged that its template letter of response did not contain details regarding how to request an internal review. The template letter had been updated as a result of the review.
24. The review addressed the complainant's concerns that she had been given several references for the same request. The Trust explained that because of the legislative timeframe for an FOI response, it gave a unique reference number to each request, enabling it to be tracked. It accepted however that the complainant's email on 29 March 2021 had clarified the information she was seeking and was not intended to be an additional request.
25. The complainant's view was that the review addressed some of the issues but also raised other issues such as the Trust's acknowledgement that it was not providing the information she had requested:

"The information below is based on previous responses and as such may not reflect the specific spend you are requesting, but more generic requests on translation services."

26. On 3 June 2021, the complainant asked the Trust for clarification as she explained to the Commissioner that some of the data was what had been previously provided "with the same inconsistencies and discrepancies".
27. Between 11 June and 9 July 2021 the complainant asked the Trust for updates.
28. On 14 June 2021, the complainant made a formal complaint to the Chief Executive about the Trust's FOI response.
29. On 12 July 2021, the complainant wrote back to the Trust arguing that the reason that the figures for 2015/2016 were incomplete was not because the Trust had changed the way it recorded information but because a previous FOI response had incomplete data as that request was made before the end of the 2015/2016 financial year. She said that she found it hard to believe that the Trust recorded this accurately for 11 months but then could not provide the data for the last month of that financial year or the full figure for the year.
30. The complainant could not accept that the spending was recorded accurately for 2013/2014, 2014/2015, 2015/2016 and was then not recorded for 2017/ 2018 (which provided a range), then recorded accurately again, albeit under a new system. She pointed out that, having looked at previous FOI responses, this range was given for several years and the responses were very inconsistent. The

complainant suggested that possibly no one had actually tried to obtain the information for 2015/2016 and 2017/2018 directly from the finance/procurement department and had recycled old responses. She said that, even if the system did not record translation and interpreting separately, the figures would still be in the system. The complainant stated that no accounting system records ranges. She said that she had a good overview as she was conducting national research. From over 200 organisations the Trust was the only one that hadn't been able to provide accurate figures, only estimates.

31. The Trust acknowledged the complainant's comments on 13 July 2021 and said that it would cooperate with any ICO investigation.

Scope of the case

32. The complainant contacted the Commissioner on 14 July 2021 to complain about the way her request for information had been handled. The complainant listed several points that had led to her complaint:

- The Trust had failed to respond within the legislative timeframe;
- denied her right to know;
- made her request more complex by issuing several request numbers;
- had ignored her internal review request four times;
- the data it had provided was contradictory and/or incorrect;
- the internal review had recycled previous contradictory information and failed to address the issues;
- after she was initially told that the data was not held, this was proved to be incorrect as some data had been provided in responses to previous FOIA requests;
- the Trust had failed to assist her in locating the information it held;
- the Trust had not included the details for requesting an internal review.

33. The Trust responded to the formal complaint that had been made on 8 November 2021. Although the correspondence stated that FOI complaints had to be dealt with during an internal review and not under

the Trust's formal complaints policy, the respondent had overall responsibility for data protection and freedom of information and would address the issues raised. A table was provided with the total expenditure for translating and interpreting services for the financial years requested, excluding services for the deaf and blind. It repeated the fact that the Trust's total expenditure was in the Annual Report and accounts for the relevant year on its website and so was exempt from disclosure under section 21 of the FOIA. The increase in expenditure for 2019/2020 was explained as the Trust having moved away from more informal translation/interpreting to accredited service providers. The Trust explained that it didn't hold information about the languages involved but provided a table of the top ten languages requested for translating/interpreting for the current (at the time) year and the previous two years.

34. The Trust apologised for not providing this information earlier, the delays that had occurred and the inconsistent information provided due to a change in the accounts payable system and the different sources used. Estimates had been provided to respond to previous FOI requests based on a notional value for these services and this information used for subsequent responses without reference to the source of data. Some of the issues covered in this correspondence are not directly relevant to this complaint. However, the Trust did not accept that the fact that it recorded separate references (FOI 7226 and FOI 7272) for what were two separate requests was incorrect. It did accept that the request/s for clarification were not separate requests. Nonetheless, there was no improper intention in this but were a means of tracking requests so that they could be responded to in a timely manner.
35. On 10 November 2021 and 6 January 2022 the complainant confirmed that she now had the information she had requested but that she required the Commissioner to look into her case and the systemic issues it raised concerning its FOIA handling.
36. The Commissioner therefore considers that, as the complainant has now received the information she sought, he does not intend to investigate whether any other information is held by the Trust. The scope of this case is therefore the procedural breaches that occurred during the course of responding to this request.

Reasons for decision

Section 1 – information held/not held

37. Section 1(1) of the FOIA states that –

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Subject to any exemptions from disclosure that may apply as outlined in the legislation.

38. Although the Trust responded within the legislative timeframe, it stated that it did not hold the information relating to part one of the request and that it did not have an accurate record of spend prior to the beginning of the then current financial year (2020/2021) as a large proportion of its interpreting/translating services had been provided by a mixture of volunteer services and staff on existing duties who assisted their colleagues with these services on an ad hoc basis. Usage had not been centrally recorded.

39. Given that the Trust did not disclose all of the recorded information it held until 8 November 2021, it did not comply with its duty under section 1(1) to identify what information it held within 20 working days and to communicate all non-exempt information to the requester. This did not occur until eight months after it should have been provided which is clearly unacceptable.

Sections 10 – time for compliance

40. Section 10(1) of the FOIA states that responses to requests made under the Act must be provided, *"promptly and in any event not later than the twentieth working day following the date of receipt"*.

41. The complainant's request for information was made on 5 February 2021. The Trust finally disclosed the relevant information it held on 8 November 2021, eight months beyond the time for compliance.

42. The Commissioner has therefore decided that the Trust did not comply with the requirements of section 10 as it did not provide all of the

information that fell within the scope of the complainant's request within 20 working days.

Other matters

43. A public authority is not obliged to provide an internal review process under the FOIA. However, it is good practice to do so. Where a public authority offers an internal review, the code of practice under section 45 of the FOIA¹ sets out the procedure that should be followed in general terms. The code states that reviews should be conducted promptly and within a reasonable timescale. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, and no more than 40 working days in exceptional circumstances.
44. The complainant asked for an internal review of her request on 29 March 2021 and the Trust provided the outcome of the internal review on 12 May 2021, 33 working days later. This did not exceed the 40 working days but was well in excess of the recommended 20 working day timeframe. However, it was clear from the outset that the complainant was unhappy with the Trust's response a month before she formally asked for a review. Prior to that, the Trust had had much correspondence attempting to put an end to the matter without really engaging with the complainant. The complainant was left trying to clarify and make alternative requests to obtain the data she had requested.

¹ [Section 45 – Code of Practice, request handling | ICO](#)

Right of appeal

45. 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@justice.gov.uk

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

46. 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.
47. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF