

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 28 September 2006

Public Authority: The Chief Officer of South Wales Police
Address: Police Headquarters
Ty Morgannwg
Cowbridge Road
Bridgend
CF31 3SU

Summary

The complainant requested information from the public authority about allegations of mistreatment/neglect/abuse at premises operated by an NHS Trust. The public authority responded by asking the requestor to narrow down his request, which he did. The public authority then refused the request by virtue of section 12, stating that the cost of complying would exceed the 'appropriate limit'. The Commissioner sought evidence to show that the cost of compliance would exceed the appropriate limit, and a member of his staff visited the authority to view its records management systems. The Commissioner has decided that, in this case, the authority applied the Act appropriately by refusing the request by virtue of section 12 and in particular the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. However, he also finds that the authority did not deal with the request in accordance with the requirements of Part I of the Act because it exceeded the time for compliance, as set out in section 10 of the Act.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

2. The complainant has advised that on 26 March 2005 the following request for information was made in accordance with section 1 of the Act:

"1. I wish to obtain details of complaints reported to the Force by patients/relatives/staff which involve allegations of maltreatment, abuse and general neglect (whether causing fatalities or otherwise) [in premises operated by Swansea NHS Trust]. Possible heads include, but are not limited to, denial of hydration or nutrition and inappropriate use of diamorphine or potassium chloride.

2. The outcome thereof.

3. What procedures have been implemented, perhaps as a result of guidance from the Home Office or Department of Health, to help prevent intentional deaths, caused by medical staff, being concealed as due to natural causes."

3. The public authority acknowledged receipt of the request on 29 March 2005. A further letter was sent to the complainant on 13 April 2005 advising him that his request was likely to exceed the 'appropriate limit' and asking him to narrow down his request. The complainant responded on 16 April 2005, narrowing his request chronologically (to a ten-year timescale) and geographically (to four named hospitals in the NHS Trust area).
4. Although it acknowledged this narrowed request on 29 April, the public authority only responded substantively to parts 1 and 2 on 31 October 2005, after intervention from the Commissioner. This letter informed the complainant that the public authority could not comply with the request for information, as to do so would exceed the appropriate limit (as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004).
5. The refusal notice states that reports of the nature requested are not stored centrally (indeed there was no requirement for unsubstantiated allegations to be recorded at all until 2003) and may be found in a variety of places and in a variety of formats. In addition, the public authority notes that reports are recorded under different headings, and so retrieving reports that fall within the scope of the request would require a large number of reports to be individually checked in order to determine whether they are relevant to the request.
6. The notice also explains the action that the public authority had already taken in order to retrieve the information requested. This included meetings with a number of departments within the public authority and initiating searches of the incident recording system and the crime recording system used by the authority.
7. The public authority states that a search for the number of reported incidents at the hospitals specified by the complainant was carried out. This revealed that in the last 27 months (which is the maximum time records are kept on this system) a total of 2937 incidents were reported which mentioned those hospitals. The public authority argues that the only way to establish whether any of these are relevant to the request would be to read each individual incident report.
8. The public authority further notes that it carried out a search for actual crimes under a series of headings which may turn up records relevant to the request (assault, complaint regarding treatment and sudden deaths). This search was

very complex and a search for the years 2003-2005 took 3.5 hours. It revealed that under those three headings there were 204 records. Again, the only way to establish whether these are relevant would be to cross-reference these and search each individual record.

9. Part 3 of the request, which relates to the public authority's procedures, was initially overlooked by the public authority but was not raised as an issue by the complainant as part of his complaint. Following intervention by the Commissioner's office, the public authority wrote to the complainant on 3 July 2006, stating that it does not hold information of the type requested in part 3.

The Investigation

Scope of the case

10. On 26 May 2006 the complainant contacted the Commissioner to complain that no substantive response to his request for information had yet been received. During the course of the Commissioner's investigation the public authority issued a refusal notice stating that it could not provide the information requested because to do so would exceed the appropriate limit.
11. The complainant specifically asked the Commissioner to consider the following points:
 - The public authority's delay in providing a substantive response; and
 - The public authority's use of the section 12 exemption to refuse to provide the information requested.
12. In addition, the Commissioner has considered whether the public authority fulfilled its duty to provide advice and assistance to the complainant, in accordance with section 16 of the Act.

Chronology of the case

13. The complainant made a complaint to the Commissioner on 26 May 2005. At that stage the public authority had neither provided the information requested nor issued a valid refusal notice, in accordance with section 17 of the Act.
14. Following the intervention of the Commissioner's office, the public authority issued a refusal notice to the complainant on 31 October 2005. This notice stated that the public authority was not obliged to comply with the request by virtue of section 12 of the Act. Section 12 allows public authorities to refuse a request if they estimate that the cost of complying would exceed the appropriate limit.
15. The complainant indicated, in a letter to the Commissioner dated 20 December 2005, that he remained dissatisfied with the way his request had been handled. In particular, he believed that the public authority could have provided him with some information under the appropriate limit.

16. The Commissioner considered the arguments put forward by the public authority in its refusal notice of 31 October 2005, and set out in paragraphs 6 to 9 (above). In order to verify the accuracy of these arguments, staff from the Commissioner's office visited the public authority on 6 September 2006. During the course of this visit the Commissioner's representative was shown the steps taken by the public authority to retrieve the information and was given the opportunity to question the authority on its estimate of the cost of complying with the request.

Findings of the case

17. The public authority's refusal notice of 31 October 2005 explained in some detail the reasons why complying with the request would exceed the appropriate limit. The visit to the authority on 6 September 2006 provided the Commissioner with the opportunity to establish whether the section 12 exemption had been applied correctly and what information, if any, could be provided without exceeding the appropriate limit.
18. The Commissioner finds that the public authority's methods of holding and storing records of crimes and incidents reported to it make this request a particularly complex one. In particular, reports are stored differently depending on the method by which they are reported to the authority and whether an actual crime has been committed.
19. During the course of his investigation, the Commissioner did attempt to resolve this case informally. In particular, he suggested that the public authority carry out a more limited search of records which, while not completely meeting the complainant's request, would at least provide some information. However, the public authority stated that it had already spent a considerable amount of time on the request, and could not do further work without exceeding the appropriate limit.

Analysis

20. The Commissioner has considered the public authority's response to the complainant's request for information.

Procedural breaches

Section 10

21. Section 10(1) of the Act states that "...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".
22. The complainant's original request for information was made on 26 March 2005 and acknowledged by the public authority on 29 March 2005. The request was then refined on 16 April 2005, but a valid refusal notice was not issued until 31 October 2005. This means that the public authority took approximately one hundred and forty working days to respond to the request.

Section 16

23. The Commissioner has considered the provision of advice and assistance by the public authority in this case. He accepts that the complainant was asked to clarify and narrow down his request, and that he was given the opportunity to contact the public authority to discuss his request. The Commissioner considers that this satisfies the requirements of the Secretary of State's Code of Practice issued under section 45 of the Act, and therefore the duty at section 16 of the Act.

Section 12

24. Section 12 of the Act removes the obligation on public authorities to comply with section 1 of the Act if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
25. The appropriate limit, as prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, is £600 for Central Government and £450 for other public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act. For the public authority to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 18 hours.
26. The Commissioner is satisfied that the public authority has already spent a considerable amount of time determining whether the information requested is held. He accepts that the public authority's systems are not equipped to retrieve

such information easily and quickly and accepts the explanation given by the public authority for its estimate that the appropriate limit would be exceeded in responding to this request, and acknowledges. The Commissioner is satisfied that to comply with this request for information would exceed the appropriate limit.

The Decision

27. The Commissioner's decision in this matter is that the public authority did not deal with the complainant's request in accordance with the requirements of Part I of the Act because it has breached section 10(1) of the Act.
28. However, the Commissioner has decided that the public authority applied the Act correctly in refusing the request by virtue of section 12 and in particular the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The Commissioner further finds that the public authority did offer sufficient advice and assistance to fulfil its duty under section 16 of the Act.

Steps Required

29. As the Commissioner's decision is that the public authority has now responded to the complainant's request in accordance with the Act, no remedial steps are required.

Right of Appeal

30. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 28th day of September 2006

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**