

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 5 October 2011

Public Authority: Oxford Health NHS Foundation Trust
Address: Trust Headquarters
4000 John Smith Drive
Oxford Business Park South
Oxford
OX4 2GX

Decision (including any steps ordered)

1. The complainant has requested a copy of compromise agreements entered into with doctors of any grade over the last 10 years. He also requested a list of exploratory issues covered by the compromise agreements (ie. the reasons why the compromise agreements were entered into).
2. The Information Commissioner's decision is that Oxford Health NHS Foundation Trust has correctly applied section 12 of the FOIA to this request for information.

Request and response

3. On 5 February 2010, the complainant wrote to Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and requested information in the following terms:

'Please provide copies of all compromise agreements you have entered into with doctors of any grade. Please also provide a list of exploratory or illustratory issues covered by the compromise agreements (ie. the reasons why the compromise agreements were entered into.)'

This request was to cover the previous 10 years.

4. On 24 March 2010 the complainant sent a request for an internal review to Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and it informed him that it held no information in respect of this request.

5. Oxford Health NHS Foundation Trust has explained to the Information Commissioner (the Commissioner) that Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust did not receive the original request. It therefore treated his request for internal review as a request for information.

Background

6. In April 2006 Oxfordshire Mental Healthcare NHS Trust and Buckinghamshire Mental Health NHS Trust merged to become Oxfordshire & Buckinghamshire Mental Health Partnership NHS Trust. On 1 April 2008 this became Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust. This became part of Oxford Health NHS Foundation Trust on 23 February 2011.
7. Oxford Health NHS Foundation Trust (the Trust) is therefore the conglomeration of a number of services and trusts by acquisition. Compromise agreements are kept by the Human Resources (HR) Department at the Trust. The information relevant to this request is therefore now held by the Trust.

Scope of the case

8. On 4 March 2011 the complainant contacted the Commissioner to complain about the Trust's failure to provide him with the requested information.
9. On 8 July 2011 the Trust explained to the Commissioner that senior officers of the Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust (the Chief Executive, the Director of HR, and the Medical Director) had confirmed that there had been no compromise agreements with any doctors over requested period. It explained that these officers had worked in those positions for years and would have direct knowledge of any agreed compromise agreements entered into with doctors. This had been verbally confirmed with other senior officers in the Clinical Governance and HR departments.
10. The Trust has also confirmed that with respect to this request, the solicitors it employs do not hold any compromise agreements relating to doctors on its behalf. Likewise it has confirmed that its Finance Department does not hold any information which records the existence of compromise agreements.

11. The Trust has explained that it holds any compromise agreements in paper form and retains them on an individual's personal file. These files are stored in its records archive and managed by its Health Records Department.
12. The Trust has explained that a search of its manual records to explicitly confirm its view that it does not hold the requested information would exceed the time for compliance as contained in the FOIA.
13. The Commissioner considers that the scope of this case is concerned with the application of section 12 to this information request.

Reasons for decision

14. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
15. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. In performing its calculation, a public authority may take into account the cost of determining whether it holds the requested information plus the cost of locating, retrieving and extracting it. For public authorities such as NHS Trusts, this cost limit is currently set at £450 and equates to 18 hours of work at £25 per hour.
16. This request was made in February 2010 and is for compromise agreements for the 10 years previous to that date. It therefore covers compromise agreements made between February 2000 and February 2010.
17. The Trust has explained that the personal files of staff are held as paper files and that any compromise agreements would be held in these files in the Trust's archive. The Trust retains a personal file for at least six years after the individual has left the organisation. However no records of staff leaving prior to 2005 have been destroyed.
18. The Trust has explained that there are 5035 archived manual files relating to employees who have left the Trust in the 10 years covered by the request. As a compromise agreement would only be relevant to an employee leaving the Trust, this is the number of files which the Trust argues would need to be searched.
19. Each manual personal file is identified by name only. The personal files are batched and kept in boxes in the archive. Each box carries a unique reference number which identifies the box and enables it to be located

- in the archive. The personal files are therefore not stored by type of departure from employment, nor by type of role. The contents of a box are largely alphabetical but the archive as a whole is not alphabetical.
20. However the archive catalogue is held electronically and can be searched by name if an individual personal file is requested. The box number and the name enable location in the archive. Each personal file is therefore identified by name only; the archive catalogue does not include profession or title.
 21. The Trust has explained that since November 2008 its HR Department has maintained a central file which is an electronic catalogue of casework containing a record of cases concerning employee relations matters. It contains 325 records of current and resolved cases and indicates whether a compromise agreement has been signed. It is therefore possible to extract names of individuals who have signed a compromise agreement for the period November 2008 to February 2010. However the personal files of the individuals concerned would have to be retrieved from the archive in order to establish whether the person was a doctor and to locate the agreement.
 22. The Trust identified 5 known cases of relevant individuals and retrieved 5 personal files from the archive. It explained that it took 3 hours to search for the information, identify the records and retrieve the records to determine if the person was a doctor. It confirmed that no compromise agreements with doctors were found.
 23. Any compromise agreements held by the Trust are therefore stored in archived manual files which can only be accessed by the name of the individual concerned. For the period November 2008 to February 2010 a list of individuals who have signed compromise agreements is available but the manual files still need to be checked as their roles are not known.
 24. With respect to the paper files held for the period February 2000 to November 2008, the Trust has explained that to search the archive for compromise agreements for this time period would exceed the cost limit. As no names are available before 2008, every file would need to be checked and the Trust has estimated it would take 3 minutes to review each file. The Trust has argued that for 5035 files, this amounts to 250 hours search time. For a two year period this equates to 1000 files which would take 50 hours of work.
 25. Therefore even if the files for 2008 to 2010 were discounted because they could be directly accessed by name, there would still remain approximately 4035 files to search. This would equate to 202 hours of work.

26. The Commissioner considers 3 minutes per file to be a reasonable estimate. However, even if it took the Trust 2 minutes to search each file, this would still equate to 135 hours of work to check 4035 files. If the request was narrowed to a two-year period, there would still remain 1000 files to be searched which would equate to 33 hours at 2 minutes per file.
27. The Trust has confirmed that it does not hold a list of doctors who have left over the past 10 years and whose names could be used to reference the relevant files in storage. It has explained that such a file would have to be compiled and that there were a significant number of doctors who have worked at the hospital and left on rotation.
28. It has clarified that over a 2 year period, it has a record of 26 career doctors (consultancy and career doctors) having left the Trust. This information is held on its electronic staff record system which has been in operation for the last two years. None of these doctors left the Trust with a compromise agreement. However, using this as an indicator it would therefore estimate that approximately 130 doctors have left the Trust over a 10 year period; an average of 13 doctors per year.
29. In addition, the Trust has estimated that as it is a teaching organisation, there are approximately 60 trainee doctors on rotation and approximately 60 leave each year. This equates to 600 personal files for the 10 year period.
30. In total therefore, the Trust has estimated that it holds approximately 730 files (130 + 600) which may relate to doctors for the period in question.
31. However as the Trust already has a list of names for 2008 to 2010, the Commissioner considers this total should be 584 files (73 doctors on average leaving every year for 8 years).
32. Given that the Trust estimates that it would take 3 minutes to check each file, it would be possible in 18 hours to check 360 files. In fact the Trust has already spent some time checking the electronic files and sampling the personal files of selected individuals so the number of files which could be checked in the remaining time would be less.
33. It is therefore apparent that out of an approximate total of 584 files which relate to doctors, the Trust may be able to potentially search 360 files (62% of the total). Even if it took 2 minutes to search each file, this would only enable 540 of the files to be checked (92% of the total). The Commissioner therefore does not consider it proportionate to require the Trust to prepare a list of the names of doctors' who have left over the past 10 years (or the years 2000 to 2008). This would

enable a targeted search but it is apparent that even this would not be possible to complete within the remaining time. In addition, the Commissioner is mindful that the Trust is adamant that its senior staff have no knowledge of any compromise agreements with any doctor over the past 10 years.

34. In view of the above, the conclusion of the Commissioner is that the Trust was correct to refuse this request under section 12 of the FOIA.
35. The Commissioner is also satisfied that the Trust is unable to provide advice and assistance to the complainant in accordance with its obligations under section 16 of the FOIA.

Right of appeal

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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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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