

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2011

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle-upon-Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant requested the disclosure of enforcement decisions made by the Care Quality Commission (the "CQC") against all the organisations regulated by it. The CQC confirmed it held the relevant information but refused to comply with the request on the basis that to do so would exceed the appropriate cost limit (section 12(1)).
2. The Commissioner has found that the CQC was correct to apply section 12(1) to the request. However, the Commissioner has found that the CQC failed to provide adequate advice and assistance under section 16(1) of the FOIA.
3. The Commissioner requires the CQC to take the following steps to ensure compliance with the legislation:
 - Provide advice and assistance to the complainant so far as it is reasonable to do so.
4. The CQC 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 February 2011, the complainant wrote to the CQC and requested information in the following terms:

"[...] could you please provide me with copies of all CQC Enforcement Decisions?"
6. On 22 February 2011 the CQC sought to clarify the request.
7. On 28 February 2011 the complainant confirmed his request in the following terms:

"I am requesting copies of all enforcement decisions made by the CQC against all the organisations regulated by the CQC."
8. On 16 March 2011 the CQC responded to the request. It confirmed it held the information but it was relying on the cost limitation to withhold it (section 12(1) of the FOIA).
9. On the same day the complainant asked for an internal review to be undertaken.
10. Following an internal review the CQC wrote to the complainant on 13 April 2011. It upheld its position that section 12 of the FOIA was engaged and refused to disclose the information.
11. The CQC further explained that if the cost exemption had not been engaged, much of the information would be likely to be exempt under sections 21, 22 and 44 of the FOIA.

Scope of the case

12. On 26 May 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. The complainant cited recent abuse cases of those in care establishments regulated by the CQC and said the lack of transparency in enforcement notices failed to demonstrate that it was an effective regulator.
14. The scope of case will be to consider the CQC's use of the cost limit exemption, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, in order to withhold the information requested.

Reasons for decision

15. Section 4(3) of the Fees Regulations sets out the basis upon which an estimate can be made:

“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per hour.”

16. The Fees Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the CQC. This is equivalent to 18 hours work.

17. Section 12(1) of the FOIA provides that public authorities do not have to comply with requests where the estimated cost of complying exceeds the appropriate limit as specified above.

18. The CQC’s estimate of the time it would take to comply with the request included the following factors:

- There are 821 instances of enforcement action.
- It would take 3-5 minutes to identify each of the registered providers, locate the provider records and extract the relevant documents.
- This would amount to between 41 and 68 working hours.

19. The CQC said the estimate was based upon extensive experience of using the current, and previous, IT systems. The Commissioner is

satisfied that the CQC has identified the quickest method of locating the information.

20. The CQC stated that it was suffering from IT problems inherited from previous regulatory bodies. The information requested is not located in a single system. Furthermore, the CQC conceded that there are inconsistencies in record keeping due to the novelty of the CQC IT system and the flux and change alluded to in this paragraph. The Commissioner is satisfied that this prevents an automated search for the information.
21. The CQC stated there are issues arising from the transition from previous regulatory frameworks and so the scope of the request is more complex than it first appears. The Commissioner, while satisfied that this might hinder efforts to locate and retrieve the information, is not convinced this is a barrier that can not be overcome by narrowing the time-frame of the request, or to otherwise provide assistance to the complainant, as obliged to do so under section 16(1).
22. Using its own calculation of time the CQC stated that it was able to provide 350 enforcement decisions. However, the CQC argued this would depend upon what 'decisions' were to be considered for disclosure as their enforcement activity is diverse. The CQC clarified that the release of 350 'decisions' could apply to the disclosure of records concerning 'Notices of Decision to vary or impose conditions' on organisations regulated by the CQC.
23. After considering all the arguments relevant to the cost limit exemption, the Commissioner is satisfied that the disclosure of information within the scope of the request would exceed the 18 hour limit.
24. In reaching his decision, the Commissioner considers that any estimate should be sensible, realistic and supported by cogent evidence.¹ Bearing this in mind, the Commissioner has concluded that the CQC applied the exemption at section 12 correctly.
25. Section 12 is an absolute exemption and is not subject to a public interest test. Therefore, the Commissioner cannot consider public interest arguments that support disclosure.
26. As the Commissioner considers that the CQC applied the exemption at section 12 correctly, there is no need to consider CQC's reference to sections 21, 22 and 44.

¹ *Alasdair Roberts v The Information Commissioner* [EA/2008/0050]

27. Section 16(1) of the FOIA provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so.
28. The Code of Practice issued under section 45 of the Act (the Code) provides guidance on good practice to public authorities in carrying out their duties in relation to the Act. The Code includes suggestions in relation to the nature of the advice and assistance that public authorities should provide in relation to section 16 of the Act. Paragraph 14 of the Code recommends that:

" 14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."
29. The CQC confirmed that it could release 350 enforcement decisions within the cost limit. However, the Commissioner finds that the CQC could have considered the disclosure of the most recent enforcement decisions, therefore avoiding the problems identified with locating and retrieving information hampered by IT legacy issues.
30. The CQC sought clarification from the complainant on the term 'enforcement notice'. The complainant repeated and confirmed his request. The Commissioner finds that the CQC enforcement procedures, if explained fully to the complainant, could have allowed him to refine his request to meet the cost limits. The Commissioner considers that the CQC sought to place the burden for revising the request onto the complainant.
31. Therefore, the Commissioner finds that the CQC's approach did not afford it the opportunity to offer an appropriate level of assistance.

Right of appeal

32. 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

33. 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.
34. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF