

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2015

Public Authority: Queen Mary, University of London
Address: 327 Mile End Road
London Borough of Tower Hamlets
E1 4NS

Decision (including any steps ordered)

1. The complainant has requested information relating to particular test results within a clinical trial carried out by Queen Mary University of London (QMUL).
2. The Commissioner's decision is that QMUL has correctly refused the request as the information is not held.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 30 May 2014, the complainant wrote to QMUL and requested information in the following terms:

"I would like to request, (for the participants for whom you have data), the 6 min walking test results both before treatment and at follow-up for:

1) Those who are recovered according to your published criteria.

I would like to clarify that I would like the data requested to be broken down into treatment type (as per your publications – CBT, GET, Adaptive pacing etc.)"
5. QMUL responded on 14 July 2014. It stated that it was refusing the request in reliance of section 14(1) as it considered the request to be vexatious.

6. Following an internal review QMUL wrote to the complainant on 25 September 2014. It stated that it had determined that the request was not vexatious. However, it relied on section 12 of the FOIA to refuse the request and explained that the cost of compliance would exceed the appropriate limit as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
7. During the course of the Commissioner's investigation QMUL confirmed that it did not hold the requested information. With further reference to the Commissioner's guidance, QMUL determined that a more appropriate response should be that the information is not held.

Scope of the case

8. The complainant contacted the Commissioner on 23 October 2014 to complain about the way her request for information had been handled.
9. As a result of QMUL's actual position regarding the nature of the requested information, the Commissioner considers the scope of this case to be to determine whether the information requested by the complainant is held by QMUL or whether it would be necessary for QMUL to create the information in order to respond to the request.

Reasons for decision

10. The Commissioner's investigation began with his consideration of section 12 of the FOIA which allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Regulations.
11. QMUL stated in its internal review:

"We do not hold the precise data you have requested."

It then proceeded to rely on section 12(1) of the FOIA to refuse the request.
12. QMUL explained to the Commissioner that the relevant raw data is held in a very large database of 3000 variables with 640 rows. It went on to explain the steps required in order to provide the information to the complainant. The Commissioner considered the explanation of the steps required to locate, retrieve and extract the information. He determined

that the application of section 12 was not appropriate in the circumstances of the case. QMUL was, in fact, stating that it would be 'creating' the information and the information was therefore 'not held'.

13. The Commissioner pursued his investigation by referring QMUL to his own guidance on when the Commissioner considers that information is 'held' by a public authority and when it can be deemed 'not held' by a public authority for the purposes of the FOIA. The Commissioner notes that a key factor here is an assessment of the level of judgement, based on expertise and experience, exercised in order to provide the requested information.
14. The Commissioner has therefore considered this complaint in terms of whether the requested information was 'held' or 'not held' at the time of the request.

15. Section 1 of 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".

16. The task for the Commissioner here is to determine whether, on the balance of probabilities, QMUL holds any information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it has considered the issue of whether information is held in past cases.

17. The complainant considers that her request comprises a request for:

"... data retrieval and not statistical manipulation. Collecting the data does not require statistical judgement but just involves writing queries to cross reference certain tables, test simple inequalities and perhaps perform simple arithmetic."

18. The complainant referred to the Commissioner's guidance which states:

"The use of query tools or languages does not involve the creation of new information. Their use should be viewed simply as the means of retrieving information that already exists electronically."

19. The complainant goes on to explain that she considers that QMUL should already employ someone who is able to access the required data and

who has expertise in Stata and MS Access. She informed the Commissioner:

"It may be that the PACE team are unaware of the support that QMUL provides for them so you could point this out to them. The data schema for the trial should be clear and well-documented which should make this task relatively time-efficient."

20. QMUL explained to the Commissioner that the requested information can only be retrieved and manipulated by a trained statistician. QMUL did not employ such a statistician at the time of the request.
21. QMUL went on to explain that there is no software specifically designed to complete the required analysis. Generic statistical software packages, for example Statistical Package for Social Sciences, have been used for some of QMUL's previous analyses of data from the PACE trial and would be suitable in this case. The requisite statistician would need to understand both the PACE trial dataset and the required analysis. The statistician would be required to carry out "a multi-level analysis of all the domains that make up 'recovery'". QMUL went on to state that there are no statisticians currently employed to undertake PACE work.
22. The Commissioner considers that all public authorities must be treated fairly. His expectations in terms of their responses to requests for information must be equal. In this case it could be assumed that a statistician capable of analysing the dataset could be found within QMUL. However, this assumption could not equally be applied to other public authorities and is therefore not appropriate. Similarly no public authority could be expected to recruit staff to provide a response to an FOIA request.
23. As the complainant correctly noted, the use of existing query tools to provide information is not considered to be creating new information. However, this refers to the use of existing query tools not the creation or determination of the query tools themselves. QMUL is clear that it would be required to create information in order to respond to the complainant's request.
24. The complainant has demonstrated her experience and knowledge in matters pertinent to her request. As referenced in paragraph 17, she is of the opinion that her request comprises data retrieval not statistical manipulation. QMUL has confirmed that this is not the case.
25. The Commissioner considers that QMUL holds the 'building blocks' to generate the requested information but the action required to produce that information would equate to creating new information in order to

respond to the request. The Commissioner notes that public authorities are not required by the FOIA to create information.

26. In considering the evidence and explanation provided by both QMUL and the complainant, the Commissioner has concluded that, on the balance of probabilities, the public authority does not hold the information as requested by the complainant for the purposes of section 1 of FOIA.

Other matters

27. The Commissioner notes that there has been some confusion surrounding this request resulting from the outcome of a previous request to QMUL by the same complainant. The complainant considered that, at the time of her request, she was requesting 'raw data' which QMUL had stated was held at the time of her previous request (27 November 2013). However, QMUL confirmed to the Commissioner that although it holds all the raw data from the PACE trial, the requested information is not held as raw data.

Right of appeal

28. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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

Alexander Ganotis
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