

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 March 2019

**Public Authority:** NHS Commissioning Board  
**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### **Decision (including any steps ordered)**

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1. The complainant has requested staff organograms for all Commissioning Support Units (CSU's) including current NHS pay bands. NHS Commissioning Board (NHS England) initially refused the request on the basis of section 43 and 21 of the FOIA but during the Commissioner's investigation reconsidered the request and sought to refuse to provide the information as to do so would exceed the appropriate cost limit under section 12 of the FOIA.
2. The Commissioner's decision is that NHS England has correctly refused the request under section 12 of the FOIA and has also complied with its obligations under section 16 of the FOIA by providing advice and assistance to the complainant.

#### **Request and response**

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3. On 28 March 2018 the complainant wrote to NHS England ("NHSE") and requested information in the following terms:  
  
*"I would like to request staff organograms for all NHS Commissioning Support Units. I would like the structure charts to include current NHS pay bands of staff."*
4. NHSE responded on 17 April 2018 and stated it did not hold staff organograms. However, it stated this information was publicly available so refused to provide this on the basis of section 21 and provided the

complainant with a link to access the organograms. For the staff pay bands, NHSE stated it held the information but considered it exempt from disclosure under section 43 of the FOIA.

5. The complainant requested an internal review on 15 June 2018. She did not agree that information such as pay bands would be commercially sensitive or be of use to competitors.
6. Following an internal review NHSE responded on 20 June 2018. It clarified the organograms publicly available do not show full CSU structures and it maintained that disclosing the full structures and associated pay bandings would reveal information about the CSU which could be used by competitors to prejudice the commercial interests of the CSU's. NHSE also sought to rely on section 22 to withhold updated copies of organograms intended for future release.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 29 June 2018 to complain about the way her request for information had been handled.
8. During the course of the Commissioner's investigation NHSE revised its position. Having received contact from the Commissioner, NHSE began the process of contacting the relevant CSU's to collate and compile the requested information but considered that during this process it became apparent that to do so would exceed the appropriate cost limit as set out in section 12 of the FOIA.
9. The Commissioner therefore considers the scope of her investigation to firstly be to determine if section 12 of the FOIA can be relied on to refuse the request. The Commissioner will go on to consider section 43 and 22 in the event that section 12 is found to be incorrectly applied.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
  - either comply with the request in its entirety, or
  - confirm or deny whether the requested information is held.

11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to NHSE.
12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
14. The Commissioner clarified with NHSE the status of the CSU's. NHSE explained that the CSU's have no legal status of their own and are legally and organisationally part of NHSE. Whilst CSU staff are employed by NHS Business Services Authority (NHS BSA) there is a Memorandum of Understanding between NHS BSA and NHSE which states that NHSE hold responsibility for the operational management of all workforce matters. The Commissioner is therefore satisfied that the costs (in terms of staff time) incurred by the CSU's in responding to the information request are costs which are passed on to NHSE.
15. NHSE had explained to the Commissioner that the initial enquiries it had made with a selection of the CSU's had led NHSE to reconsider its position and state that it would exceed the cost limit at section 12 to respond to the request.
16. The Commissioner asked NHSE to consult further with the CSU's on this to obtain more detailed explanations for the cost estimates that had been given by the CSU's.
17. NHSE provided further details from each of the CSU's involved and the overriding issue seems to be that none of the CSU's hold current structure charts. The process of manually collating this information is the activity that the Commissioner notes appears to take the most time.

18. The Commissioner has summarised the estimates below:

| CSU                        | Time estimate | Explanation   |
|----------------------------|---------------|---|
| Midlands & Lancashire CSU  | 20 minutes    | NHSE explained that this CSU had recently purchased specialised software which made the extraction of information much quicker.   |
| Arden & GEM CSU            | 23 hours      | The CSU stated it did not hold structure charts so would need to create this from the information it held. This information was not held centrally or in a single document. The CSU stated it had over 900 employees and if it conservatively estimated it would take 90 seconds per employee to place them in the structure chart with the correct banding this would exceed 23 hours of staff time. |
| NEL CSU                    | 30 hours      | As with the previous CSU, it was stated that no structure chart was held but the building blocks to create one were held. This CSU stated it had over 1800 employees and estimated 60 seconds per person to collate the required information.   |
| North of England CSU       | 19.6 hours    | Again it was stated this would require a manual extraction of data. This CSU had a headcount of 1175 as of January 2019. This CSU estimated 60 seconds per member of staff to produce the requested information.  |
| South Central and West CSU | 30 hours      | This CSU also stated no current structure charts were held and would need to be manually pulled together from information held. It stated it could be extracted as an Excel report but this would need to be converted into a structure chart. The CSU estimated 90 seconds per employee and has a  |

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|  |  | headcount of approximately 1200 staff. |
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19. The Commissioner notes there is a consistent approach taken across all the CSU's and consistency in the estimates provided – all the CSU's do not hold structure charts and would need to manually create the information from the building blocks they hold (with the exception of one CSU who has specialised software). In addition to this all of the CSU's have estimated similar times to carry out this process. Some of the CSU's have estimated 90 seconds and some 60 seconds. The Commissioner's view is it therefore reasonable to accept the lower estimate of 60 seconds per staff member as if it is possible for one CSU to do it in this time then it stands to reason all of the CSU's should be able to extract and collate the required information in the same time.
20. Even using the lower estimate of 60 seconds for each CSU the time required to extract and collate this information would far exceed the 18 hour limit.
21. The Commissioner does consider the estimates provided by the CSU's to be reasonable in light of the explanations given and she accepts it would take more than the 18 hour limit to respond to the request. She is therefore satisfied that NHSE is correct to apply section 12(1) to the request.

### **Section 16(1) – The duty to provide advice and assistance**

22. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
23. During the investigation, the Commissioner asked NHSE to inform the complainant of the revised position regarding the application of section 12 and to provide advice and assistance in line with its obligations under section 16. NHSE wrote to the complainant and explained that it had considered how the request would be refined to potentially bring the time for compliance under the appropriate limit. NHSE did indicate that

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

a request for information from just a single CSU may do this but it would be likely that NHSE would revert back to its initial reliance on section 43(2) to refuse any refined request even if it fell under the cost limit.

24. On balance, the Commissioner has concluded that NHSE has complied with section 16(1). It has explained that the request could be refined to just one CSU which does meet the requirement to provide advice and assistance. Whilst the Commissioner does not think it was necessary to pre-empt how they would respond to a refined request before this is received; it is clear that advice and assistance was given to the complainant and NHSE complied with section 16 of the FOIA.

## Right of appeal

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25. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**