

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2019

Public Authority: Northern Devon Healthcare NHS Trust

Address: North Devon District Hospital
Raleigh Park
Barnstaple
Devon EX31 4JB

Decision (including any steps ordered)

1. In a multi-part request, the complainant has requested information associated with Northern Devon Healthcare NHS Trust's mobile device policy and procedures. Northern Devon Healthcare NHS Trust ('the Trust') released some information and advised that other information was in the course of being reviewed. The Trust refused to comply with five parts of the request under section 12(1) of the FOIA (cost exceeds the appropriate limit). The complainant is dissatisfied with the Trust's reliance on section 12(1).
2. The Commissioner's decision is as follows:
 - The Trust is entitled to rely on section 12(1) to refuse to comply with five parts of the complainant's request.
 - The Trust breached section 16(1) of the FOIA as it did not consider whether it would be possible for the complainant to refine his request to bring it within the cost limit, at the time of the request.
3. The Commissioner does not require the Trust to take any remedial steps.

Request and response

4. On 21 May 2018 the complainant submitted a multi-part request to the Trust. Included were requests for information in the following terms:

*"3. Using the table below, please provide the data relating to how many of the following devices were NOT used in accordance with the Trust's procedure titled: '**Mobile Device Policy and Procedures for Trust Owned Devices**'.*

For the avoidance of any doubt: this question specifically relates to penalties that might have been imposed for those that did not comply with the above mentioned document." [With a table requesting information on particular devices across 2014-2017.]

*"5. Using the table below, please provide the data relating to how many of the following devices were returned and/or re-assigned in accordance with the Trust's procedure titled: '**Mobile Device Policy and Procedures for Trust Owned Devices**'.*

For the avoidance of any doubt: this question specifically relates to the termination of employment section within the above mentioned document." [With a table requesting information on particular devices and whether those devices had been returned or re-assigned, across 2014-2017.]

"6. Using the table below, please provide the data relating to how many of the following devices did the Trust record as received via their Computer Management Database:" [With a table requesting information for particular devices across 2014-2017.]

"7. Using the table below, please provide the data relating to how many of the following (new) devices did the Trust allocate to staff via their Computer Management Database:" [With a table requesting information for particular devices across 2014-2017.]

and

"9. Using the following table, please provide the data relating to how many of the following devices did the Trust recorded [sic] as returned an/or reassigned via their Computer Management Database:" [With a table requesting information for particular devices across 2014-2017]

5. The Trust responded on 18 June 2018. It refused to comply with the above parts of the request under section 12(1) of the FOIA as the cost of doing so would exceed the appropriate limit.

6. Following an internal review the Trust wrote to the complainant on 16 October 2018. The Trust confirmed its reliance on section 12(1) with regard to parts 3, 5, 6, 7 and 9.

Scope of the case

7. The complainant contacted the Commissioner on 15 October 2018 to complain about the way his request for information had been handled.
8. Having liaised with the complainant, the Commissioner's investigation has focussed on whether the Trust can refuse to comply with parts 3, 5, 6, 7 and 9 of his request under section 12(1) of the FOIA. She has also considered whether the Trust complied its duty under section 16(1) to provide advice and assistance, where reasonable to do so.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

9. Section 12(1) of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to comply with the request in its entirety.
10. 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 the Trust. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
11. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

12. In a submission to the Commissioner the complainant has noted that the Trust answered part 2 of his request but has refused parts 6 and 7, which he says should be the same as part 2, if stock is managed as the Trust claims it is.
13. Part 2 of the request was for:

*"2. Using the table below, please provide the data relating to how many of the following devices were issued in accordance with the Trust's procedure titled: **Mobile Device Policy and Procedures for Trust Owned Devices**. For the avoidance of any doubt: this question specifically relates to a signed user agreement, that the Trust should hold for each device they issued."* [With a table requesting information for particular devices across 2014-2017.]
14. The complainant goes on to dispute that the Trust would need to do a line by line search of any database. He says that searching what he has called the Trust's *Computer Management Data Base* (CMDB) is not as time consuming as the Trust claims because it is an industry standard software tool for managing IT assets. The complainant has provided the Commissioner with evidence (an email that references an internal audit) that suggests to him that an officer had completed a very granular search of the CMDB when searching for a particular serial number.
15. The complainant has gone on to argue that searching under a more generic term, like 'iPad', would be easy and that the retrieved results would "inevitably pull back all of the values associated with any particular record". Based on the Trust's responses to other parts of his request, the complainant considers that only a couple of hundred records are in scope and so disputes that a line by line search costing more than £450 is necessary.
16. In its submission, the Trust has told the Commissioner that in order to address these parts of this request it would require analysis of its CMDB; that this contains information related to the period 2014-2017 but that retrieving and extracting it to answer particular parts would exceed the appropriate limit of 18 hours.
17. The Trust has explained that its *Configuration Management Data Base* contains all Trust IT devices including the 391 tablet devices that are of interest to the complainant. Each device has an audit trail containing many individual audit logs which would need to be manually searched for the information. It says the information requested to address parts 3, 5, 6, 7 and 9 is not available as discrete and separate fields and therefore cannot be searched for or extracted easily. Instead the information *may* exist within audit log text boxes and may be described

in a variety of ways. The Trust says that the CMDB has no audit 'dump all' function.

18. The Trust has gone on to confirm that to search for the requested information would require a member of staff to read and review line-by-line each individual audit log within a tablet devices audit trail along with any associated call references. He or she would then need to select and extract the relevant text into a spreadsheet. Additionally and separately the time stamp for each audit event and/or call reference would need to be selected and extracted and added to this spreadsheet. The Trust says this is necessary because different pieces of information come from different screens (for example an audit event log is stored on one screen and, whilst its date and time stamp are on another screen). The spreadsheet would then require additional manual work to determine, interpret or extract the context of the recorded text into separate columns to support further analysis.
19. The CMDB is managed by the Trust's Digital Healthcare Services department which considered the possible and most efficient options for searching for the requested information. The Trust says that an investigation of tablet devices samples was undertaken by its staff to determine how long it might take to retrieve and extract the information.
20. This sampling investigation determined that approximately 20 minutes of manual reviewing and extracting was required per tablet device. This was subsequently reviewed by the Information Governance team which also believed it to be a realistic and reasonable time frame. Once multiplied by the number of tablet devices, the Trust says the time required to answer the questions was calculated to be 130 hours (391 devices x 20 minutes per device search).
21. The Trust has provided the Commissioner with evidence of the sampling exercise it conducted and the steps required. The Trust has also confirmed that the time estimate is not in determining whether the information is held or in locating it, but in retrieving and extracting the information.
22. The Commissioner has reviewed the sampling evidence provided. She notes that each device requires a multi-step process, in which information associated with each device needs to be carefully reviewed, checked and extracted.
23. The Trust has also addressed the concerns the complainant raised in his submission to the Commissioner. With regards to the information provided for part 2 of the request, the Trust says it could supply this because it was available from top level summary information within the

CMDB which was accessible in a reasonable time frame (in that case, four hours).

24. The Trust goes on to note the audit that the complainant had referred to which it says was conducted in May 2016 as part of a fraud investigation which was then reviewed by NHS Protect. (It says the information in the fraud investigation report was not included as it only addressed a discrete period and a specific line of enquiry.) The Trust has explained that searching the CMDB for certain information such as a device serial number is straightforward. However, it says other information is stored as narrative in text boxes and is therefore more difficult and time consuming to retrieve before any analysis and extraction can be conducted.
25. The Commissioner considers that the time estimate that the Trust has calculated, which it based on a sampling exercise, is reasonable. But even if it only took five minutes to retrieve and extract information associated with 391 devices, this would still take 32.5 hours and exceed the cost limit. The Commissioner is satisfied that the Trust has given sufficient thought as to whether it can comply with the five parts of this request. She also considers it has addressed the complainant's specific concerns satisfactorily. Given the volume of devices and the way the Trust's data base is configured, the Commissioner has decided that it would not be possible to comply with the outstanding parts of the complainant's request within the cost limit under section 12(1) of the FOIA.

Section 16 – advice and assistance

26. Under section 16(1) of the FOIA, a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
27. In its submission the Trust has acknowledged that it did not ask the requester to refine his request because it would still not be able to provide an accurate answer for any reduced timescale given due to the database configuration and search method it has described above. As an example, the Trust says that it could not provide figures for 2016 without manually reviewing each tablet device to search and extract information related to that year.
28. The Trust says that, with hindsight, it recognises that it should have explained to the complainant at the outset why his request was refused in part in May 2018 "and offered advice and assistance". The Commissioner reminds the Trust that section 16 obliges an authority to offer advice and assistance *where it is reasonable to do so*. So the Trust should have considered whether there was any way the complainant

might have refined his request to bring it within the cost limit and still receive meaningful information. If it considered there was not, it might usefully have explained this to the complainant at the time.

29. The Commissioner finds that the Trust has now considered whether there was any appropriate advice and assistance it could have offered to the complainant. She accepts that, given the scope and number of the parts of the request in question and the Trust's data base configuration and search method, the request could not be meaningfully refined to bring it within the cost limit.

Right of appeal

30. 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

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

31. 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.
32. 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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