

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2022

Public Authority: South Central Ambulance Service NHS Foundation Trust

Address: Northern House
7-8 Talisman Business Park
Bicester
Oxfordshire
OX26 6HR

Decision (including any steps ordered)

1. The complainant has requested information broadly relating to a previous contract. South Central Ambulance Service NHS Foundation Trust ("the Trust") responded to say that it held no information beyond what had already been provided.
2. The Commissioner's decision is that two of the six elements of the request were not valid for the purposes of FOIA. In respect of elements [4], [5] and [6], the Commissioner is satisfied that the information is reasonably accessible to the complainant. In respect of element [1], the Commissioner does not consider that the Trust has demonstrated that it has previously provided this information and therefore has, on the balance of probabilities, failed to comply with section 1(1) of FOIA. The Commissioner also finds that the Trust breached section 17 of FOIA in responding to the request.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Either provide the complainant with the information in scope of element [1] or issue a refusal notice that complies with section 17 of FOIA.
4. The Trust 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The Commissioner understands that the complainant's company previously leased vehicles to the Trust. The Trust took a decision in 2018 that a contract for the future leasing of vehicles needed to be tendered for under a competitive process and that it would no longer be leasing vehicles from the complainant's company under the existing arrangement. The complainant argues that his company was not made aware of the Trust's concerns about the existing arrangement and had therefore made financial commitments on the basis that the existing arrangement would continue. The complainant also argued that his company had not had the opportunity to bid for a new contract. The complainant unsuccessfully attempted to recover monies via the small claims process.
6. For its part, the Trust denies having done anything wrong and argues that it was only seeking to follow best practice so as to ensure value for money. The Commissioner takes no view either way on the matter.
7. Through 2019 and 2020, the complainant engaged in numerous exchanges of correspondence with the Trust including the making of information requests.

Request and response

8. On 12 August 2021 the complainant requested information of the following description:
 - [1] "Is [Officer 1] a PTS team lead? [sic]
 - [2] Did the Trust check with [Officer 1] whether he knew or not that all the vehicles he ordered off [my company] were for a minimum of 12 months?
 - [3] Did the Trust confirm the story given by [Officer 2] that [Officer 1] had discussed with [my company] their minibuses which, according to the Trust 'The age and conditions of the vehicles were causing patient complaints and affecting the continuity of service' yet continued to use them for a further 9 months?
 - [4] The trust have so far said there are no formal complaints about any buses, yet have given this as a reason to exclude [my company] from the bidding process or even being told about it. So do the Trust have set procedures for excluding companies? And were these followed? Or did [Officer 2] just take the decision and tell [Officer 1] not to mention it to [my company] or reply to e-mails?

- [5] Can the Trust tell me how much fuel was charged on their copy of 456627?
- [6] The Trust have previously stated that 'There were instances where there was evidence of excessive fuel charges' relating to invoice 456372 are the Trust referring to the price of the fuel of the amount of the fuel?"
9. On 20 August 2021, the Trust responded. It stated that it had no further information to provide as the recorded information it did hold had been provided to the complainant, either in respect of other FOI requests or as part of its court case with the complainant's company.
10. The complainant requested an internal review on 21 October 2021, although the letter focused on contractual and procurement issues, not on the information that should be provided. The Trust sent the outcome of its internal review on 9 December 2021. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner on 31 August 2021 to complain about the way his request for information had been handled. His supporting evidence included both the request set out above and the requests he had made in 2019 and 2020.
12. The Commissioner informed the complainant that there had been an undue delay in bringing the correspondence prior to May 2021 to his attention and that he would therefore not be considering it. He agreed to deal with the above request once the complainant had sought an internal review.
13. Following the outcome of the internal review, the complainant contacted the Commissioner again on 21 December 2021 to ask for the complaint to be investigated.
14. Given the wording of its response of 20 August 2021, the Commissioner has proceeded on the grounds that the Trust has relied on section 21 of FOIA to withhold the requested information. He therefore asked the Trust to demonstrate why it considered that the complainant already held the information in question.

Reasons for decision

Which parts of the request were valid?

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

16. Section 84 of FOIA defines "information" as being information "recorded in any form."

17. The Commissioner does not consider that elements [2] or [3] of the request seek recorded information. Information held in someone's mind, is not recorded information. The Trust is not required to ask its staff what they are thinking, or might have thought. Nor is it required to "confirm" information it has provided.

18. The Commissioner also considers that the bulk of element [4] does not constitute a request for information – except inasmuch as it seeks the Trust's policies on excluding companies from procurement processes.

19. Elements [1], [5] and [6] all meet the definition of a valid request.

Section 21 – reasonably accessible to the requestor

20. Section 21 of FOIA provides an exemption from disclosure for any information that is already "reasonably accessible" to the person requesting it. It is one of the few parts of FOIA that allows a public authority to take account of the identity of the person making the request.

21. In respect of element [4], the Trust noted that it had written to the complainant on 12 June 2019, explaining its procurement process and provided a quote from that correspondence. No copy of that letter was provided to the Commissioner, but he notes that the original covering email (to which the letter was attached) was included in the complainant's supporting evidence. In addition, he notes that the request itself includes part of the same quote the Trust provided in its submission. The Commissioner is thus satisfied that the complainant has already received this information and that it is therefore reasonably accessible to the requestor.

22. In respect of elements [5] and [6], the Trust told the Commissioner that it had been unable to locate its own copies of the invoice, but that, as the invoices had been raised by the complainant's own company, he should still have access to them.
23. Given the way the request is worded, the Commissioner considers that it is more likely than not that the complainant still retains his copy of both invoices. Whilst element [5] of the request does seek "your copy", the Commissioner considers it unlikely that the Trust would hold different copies of the same invoice. To do so would serve no purpose and would be illogical.
24. As he considers that the complainant already has access to this information, the Commissioner does not consider it proportionate to determine whether or not the Trust holds its own copy of the invoices.
25. Finally, in respect of element [1], the Trust provided the information to the Commissioner, but it did not provide evidence to demonstrate when the information had been provided to the complainant. Indeed, in some of its correspondence with the complainant, the Trust has indicated that it did not give out the names of its team leaders.
26. The Commissioner is therefore satisfied that the Trust holds this information. However, it did not communicate this information in response to the request, it has not demonstrated that the complainant already has access to this information and no other valid exemption from disclosure has been relied upon. The Commissioner therefore considers that the Trust has failed to comply with its obligations under section 1(1) of FOIA in respect of this element.
27. Given the reservations it has previously expressed about providing such information, the Trust has the option to issue a refusal notice rather than disclosing the information – however, it may only withhold the information if it can cite a valid exemption from FOIA and it should be able to substantiate that exemption if asked to do so by the Commissioner.

Procedural matters

28. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

29. Whilst the Commissioner notes that the Trust referred to all the information having previously been provided to the complainant, he notes that the response did not state explicitly that the trust was relying on section 21 of FOIA to withhold the requested information.

30. The Commissioner therefore finds that the Trust breached section 17 of FOIA in response to the request.

Other matters

31. The Commissioner would note that FOIA provides a right of access to recorded information held by a public authority. It does not provide a right to challenge a decision of the public authority, nor does it give a person the right to argue with or dispute the accuracy of the information that the public authority holds.

32. Attempts to use FOIA to re-open or re-argue grievances that have already been addressed (especially when such grievances have already been subject to independent scrutiny – such as by a court) can be regarded as an abuse of process.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

34. 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.
35. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF