

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

### **Decision notice**

**Date:** 1 December 2022

**Public Authority:** Black Country Healthcare NHS Foundation Trust  
**Address:** Trafalgar House, 2nd Floor  
47-49 King Street  
Dudley  
West Midlands  
DY2 8PS

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

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1. The complainant has requested all correspondence between the Spectrum 10K research project and Black Country Healthcare NHS Foundation Trust (the Trust). The Trust applied section 12 FOIA as it said it would exceed the cost limit to comply with the request.
2. The Commissioner's decision is that section 12 FOIA was correctly applied to the request. The Trust however breached section 16 FOIA in the handling of this request. The Trust also breached section 10 FOIA in the handling of this request as it did not respond within the statutory time for compliance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance as to how the request maybe refined or confirm that this would not be possible in accordance with its obligations under section 16 FOIA.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 27 January 2022 the complainant made the following request for information under the FOIA for:  
  
"A copy of all correspondence between the Spectrum 10K research project and Black Country Healthcare NHS Foundation Trust."
6. The Trust provided a response on 29 June 2022, it refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
7. The complainant requested an internal review on 1 July 2022, in particular he argued that the Trust's estimate didn't make clear whether there were any duplicates within emails identified which may reduce the time implications.
8. On 9 September 2022 the Trust provided the result of the internal review, it upheld its application of section 12 FOIA.

## **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way the request for information had been handled, in particular the Trust's application of section 12 FOIA to the request.
10. The Commissioner has considered whether the Trust was correct to refuse to comply with the request under section 12 FOIA.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

11. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for

- central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Trust is £450.
13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Trust.
  14. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
    - determining whether the information is held;
    - locating the information, or a document containing it;
    - retrieving the information, or a document containing it; and
    - extracting the information from a document containing it.
  15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
  16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
  17. Where a public authority claims that section 12 of 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 or confirm that this is not possible, in line with section 16 of FOIA.
  18. The Trust explained that the request relates to 'all correspondence' and it confirmed that not all correspondence is saved and maintained; relevant information linked to the research will be stored as part of the relevant files, but this will not be all correspondence.
  19. In order to locate all correspondence that the Trust holds the following actions would need to be completed: -

- A search of all current staff members email inboxes, deleted items and sent items.
  - A search of past staff members email inboxes, deleted items and sent items that were involved in the research project.
  - A review of all saved documentation linked to the research project; which would equate to client files as well as research files.
20. As part of the time to locate the information and review this to ensure that it is linked to the correct research study a sample email account was reviewed by the Trust. One search identified over 186 emails these then were reviewed to ensure that these were linked to the Spectrum 10K project and so filtered out accordingly. Some of these emails were exceptionally long and included emails internally which would have been about multiple topics therefore the in scope information would have needed to be lifted from the email. Multiple emails were reviewed and saved to check the amount of time it would take. For the search and the review it took an average of 10 minutes per email:
- $10 \times 186 = 1860 \text{ minutes}$   
 $1860 / 60 = 31 \text{ hours}$
21. The Trust confirmed that this was based on a search of one staff members inbox, however there are 15 staff members identified within the research team who would have involvement within the Spectrum 10K project.
22. Based upon the fact that the only way to determine whether any further information is held would require a search of the email accounts of 15 members of staff and in relation to one member of staff 186 potentially relevant emails were identified as a result of the sampling exercise, even if this were reduced to 5 minutes per email this would still equate to over 15 hours of work with a further 14 staff members email accounts to search. The fact that some emails may contain duplicate information would not reduce the time implications as these emails would still need to be located and reviewed to be able to ascertain this. The Commissioner therefore accepts that based upon the arguments presented by the Trust it would exceed the cost limit under section 12 FOIA to comply with this request.

### **Section 16 – advice and assistance**

23. As explained above, when relying upon section 12 FOIA, under section 16 FOIA a public authority must (where reasonable) provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit or confirm that this is not possible.

24. In this case the Commissioner has not seen any evidence that the Trust has complied with its duties under section 16 FOIA. It has therefore breached section 16 FOIA in the handling of this request.

**Section 10**

25. Under section 10 FOIA a public authority is obliged to respond to a FOIA request within twenty working days. In this case the Trust failed to respond to the request within the statutory time for compliance. It therefore breached section 10 FOIA in the handling of this request.

## Right of appeal

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

27. 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.
28. 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.....**

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**