

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

### **Decision notice**

**Date:** 8 December 2022

**Public Authority:** Liverpool University Hospitals NHS Foundation Trust

**Address:** Prescot Street  
Liverpool  
Merseyside  
L7 8XP

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

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1. The complainant made a request on 7 July 2022 for the details of 49 specified contracts identified on a spreadsheet provided in response to an earlier FOIA request. The Trust refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
2. The Commissioner's decision is that section 12 FOIA was incorrectly applied to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response under the FOIA to the request dated 7 July 2022 not relying upon section 12 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 7 July 2022 the complainant made the following request for information under the FOIA for (this request followed on from a response to a previous FOIA request made):

"...request details of the contracts outlined in the invoices or otherwise provide details as to what actual goods and services were provided for the sums involved."

6. The Trust responded on 4 August 2022 under the reference FOI 8339. It explained that:

"Finance have confirmed if they were to review the 49 items within the spreadsheet previously provided, this would take the Trust over the appropriate limit (18 hours) in accordance with Section 12 of the FOIA.

The records may also contain information which is exempt from release as commercial information in accordance with Section 43 of the FOIA.

Given the number of records and the potential exclusions under Section 43 of the FOIA, it would be necessary to individually review each and every one of those records for the applicability of the above exclusions."

7. The complainant requested an internal review on 12 September 2022.

8. On 12 July 2022 the Trust provided the result of the internal review, it upheld its application of section 12 FOIA. It said that:

"I have established that your original request was for details of goods/services contained in contracts which related to the 49 invoices disclosed in the Trust's response for FOI 8271. I have attached at Appendix B the response dated 6 July 2022 to FOI 8271.

Having discussed the issue with the Trust's Finance Department, they have confirmed that the requested information may be held in each of the contracts linked to the 49 invoices, however, a review of each contract would be required to establish if this is the case. It is deemed that a review of 49 contracts would exceed the 18 hours allocated to FOI requests.

A sampling exercise that was carried out determined that it would take approximately two hours to review each contract: 49 contracts at approximately 2 hours each = 98 hours."

## 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.
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. In this case the Trust has applied section 12 FOIA on the basis that it would exceed the cost limit to extract details of goods/services contained within the 49 contracts relevant to the request as explained in the internal review. However this request had another part to it, the first part was for "details of the contracts outlined in the invoices". Details of the contracts is not limited only to details of goods/services and therefore would cover the contracts in their entirety.
19. Whilst the Commissioner notes the Trust's time estimate of 2 hours per contract to review the details within them, this would not be necessary for a request requiring the contracts in full (not limited just to details of goods/services).
20. The Commissioner acknowledges that the Trust's position is that it would still be required to review each contract to determine whether exemptions would apply, however as outlined at paragraph 14 above, time taken to consider whether exemptions apply and makes redactions are not a relevant consideration under section 12 FOIA.
21. On this basis the Commissioner does not consider that the Trust was correct to apply section 12 FOIA to the request dated 7 July 2022 dealt with under the reference FOI 8339.

## Right of appeal

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22. 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)

23. 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.
24. 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**