

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2023

Public Authority: North East Ambulance Service

Address: Bernicia House
The Waterfront, Goldcrest Way
Newburn Riverside
Newcastle Upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant requested information held by North East Ambulance Service (NEAS) relating to costs involved in instructing solicitors with specific reference to employment disputes.
2. Whilst NEAS provided some information, it advised that it was unable to provide the breakdown requested, citing section 12(1) - cost limits, of FOIA.
3. It is the Commissioner's decision that NEAS has correctly applied section 12(1) to the original request (Request one); however, it failed to identify that a new request (Request two) was included within the complainant's internal review request. As a result the Commissioner has found a breach of section 1 of FOIA.
4. The Commissioner requires NEAS to take the following step to ensure compliance with the legislation.
 - Consider and provide a substantive response to Request two (set out in paragraph eight of this decision notice) in accordance with its obligations under FOIA.
5. NEAS must take this step 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

6. On 13 September 2022, the complainant wrote to the NEAS and requested the following information (Request one):

“I respectfully request, that the trust [NEAS] provides, the total amount of monies spent as a result of instructing solicitors, to deal with employment disputes, by the trust for the following time periods:

 - a. April - March 2019 - 2020
 - b. April - March 2020 - 2021
 - c. April - March 2021 - 2022”
7. NEAS responded on 11 October 2022 explaining that it was unable to provide a breakdown of solicitors’ fees for employment disputes only but did not give any further explanation. It did however provide some information relating to the total of legal fees incurred for the years within the scope of the request.
8. In the internal review request, the complainant did not accept that NEAS was unable to provide the information they required. The complainant then went on to ask for the following set of information (Request two), stating that they could calculate the information they required from this:

“Regarding the legal costings/ figures, which you have kindly supplied for the years in question, I respectfully ask that you provide a further breakdown of these figures, in relation to solicitor's legal costs for the following types of claims:

 - Employers Liability
 - Public Liability
 - Clinical Negligence
 - Losses and Claims”
9. In its internal review response, covering both requests, NEAS stated that it did not hold the information in the “granularity” requested. However, it also stated that it was refusing the request under section 12(1) of FOIA, as the cost of compliance would exceed the cost limit.

Scope of the case

10. The Commissioner is satisfied that the information set out in paragraph eight of this decision notice is a new request for information. Whilst the complainant asked for this information for the same purpose as that which he had asked for in Request one, it is clearly a different set of data.

11. The Commissioner will decide whether NEAS holds the information relevant to Request one, and if so, if it is correct to rely on section 12(1) of FOIA as its basis for refusing Request one.
12. The Commissioner will also consider whether the council identified Request two as a new request for information, and if so, whether it provided a response that complied with its obligations under FOIA.

Reasons for decision

Request one

Section 12 FOIA – cost limits

13. 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”).
14. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £450 for NEAS.
15. 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 provides a time limit of 18 hours for NEAS.
16. 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.
17. In its submissions to the Commissioner, NEAS confirmed that it does hold the information relevant to Request one. He will therefore go on to consider whether NEAS is correct to refuse Request one under section 12(1) of FOIA.
18. NEAS has explained that as invoices are listed by generic terms such as ‘legal fees’ or ‘professional services’, in order to determine which

invoices relate specifically to employment tribunals, a manual check of each invoice would have to be carried out.

19. Using the search terms 'legal fees' and 'professional services', NEAS stated that it had identified 632 invoices for the relevant time period. It stated that in order to establish whether each invoice related to a potential employment dispute, it would need to check each invoice and then cross reference this to the personnel file to determine whether the fees incurred related to an employment matter, or other matters. NEAS claims that this work would require two people, one from the finance team and one from the HR team. It estimated that at five minutes per invoice per officer, it would take approximately 104 hours to review all the invoices identified.
20. The Commissioner is not persuaded that it would require an average time of 10 minutes of staff time to deal with each invoice that has been identified as being potentially relevant to the request. However, in order for the request to fall within the cost limits, one officer would have less than two minutes per invoice, which the Commissioner accepts is not reasonable or achievable.
21. Having considered the information available, the Commissioner has decided that NEAS is entitled to rely on section 12(1) of FOIA as its basis for refusing Request one. Furthermore, the Commissioner is satisfied that NEAS provided sufficient information to meet its obligation to provide advice and assistance under section 16 of FOIA.

Request two

22. The internal review response issued by NEAS did not identify that the complainant had made a new request for information within their internal review request; instead, NEAS appears to have provided a response which considered all of the complainant's representations to form part of Request one.
23. Whilst the Commissioner has a clear understanding of NEAS's position in relation to Request one, it appears not to have directly addressed Request two. It's failure to do so has resulted in a breach of section 1 of FOIA.
24. The Commissioner therefore requires NEAS to issue a fresh response to the complainant that addresses Request two.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Ben Tomes
Group Manager
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Wycliffe House
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