

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2023

Public Authority: Great Western Hospitals NHS Foundation Trust

Address: The Great Western Hospital
Marlborough Road
Swindon
SN3 6BB

Decision (including any steps ordered)

1. The complainant requested information from Great Western Hospitals NHS Foundation Trust (the public authority). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner requires the public authority to take the following steps:
 - Provide advice and assistance to the complainant to assist in submitting a request falling within the appropriate limit.
3. The public authority must take the above 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

4. On 1 December 2022, the complainant made the following request for information to the public authority:

“Please could I be given information on how many patients over the last 5 years have attended Cardiology with damage to their heart as a consequence of chemotherapy treatment from Oncology at GWH.”
5. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

Reasons for decision

Section 12 – cost of compliance

6. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.¹ The appropriate limit² for the public authority in this case is £450.
7. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that:

“To be able to be accurate across SACT regimes and referral to Cardiology, the Trust would need to establish over the last 5 years all the patients that have had a cardiotoxic drug. This would take the Trusts pharmacy department a significant amount of time to isolate and filter the reports, approx. 5 hours. The Trust would then need to review each of the identified patients’ medical records to look for a new Cardiology referral. To be clear about damage to the heart it would then be necessary to review ECHO’s of these patients’ to confirm damage, the Trust would only be sure that damage was linked to chemotherapy if the person had a baseline ECHO which they may not have had if not clinically indicated.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

The Trust have approx. 1150 referrals into Haematology/Oncology per year, accepted that not all will have a cardiotoxic drug. The total for the 5 years would therefore be approximately 5750 records to check through. Taking out the 5 hours pharmacy would need for reports, this would leave less than 15 seconds to retrieve, locate and extract the relevant data from each record.

Some of the files will be held on site and some of them will be held at the off-site storage facility. If records were held on site, it would take an average of a few minutes to find the record and start searching for the information. If the records were held off-site then the average time to retrieve the file and start searching would be a lot longer. To retrieve them, the file numbers would have to be searched and requested from the supplier, then delivered to the Trust. When the files are available, they would then have to be searched manually. Some of these files may be slim, but others will likely be large files and in some cases may contain multiple volumes. Locating the data will be difficult and as explained, the data may not even exist in many of the cases. However, without checking the entire file then this will not be known. Therefore, the search for the data will exceed the time/cost limit.”

8. The Commissioner is satisfied that the public authority’s arguments above are justified because it has explained that providing the requested information would involve lengthy manual searches and review of potentially thousands of records. It is clear that the work involved would exceed the cost limit significantly.
9. The Commissioner’s decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

Section 16(1) – The duty to provide advice and assistance

10. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice³ in providing advice and assistance, it will have complied with section 16(1).
11. The Commissioner notes that the public authority did not provide advice and assistance to the complainant. The Commissioner is therefore

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

satisfied that the public authority did not meet its obligations under section 16 of FOIA. The public authority must now provide appropriate advice and assistance to the requester.

Right of appeal

12. 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

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

13. 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.
14. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF