

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

### **Decision notice**

**Date:** 4 December 2023

**Public Authority:** NHS England (NHSE)  
**Address:** PO Box 16738  
Redditch, B97 9PT

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

---

1. The complainant has requested information relating to NHSE's review into the North East Ambulance Service NHS Foundation Trust.
2. The Commissioner's decision is that NHSE has now disclosed all the information to which the complainant is entitled and therefore met its obligations under FOIA. It however breached sections 1(1)(b) and 10 of FOIA for communicating information to which the complainant was entitled late, requesting unnecessary clarification for one element of the request and failing to respond to the request within the statutory timeframe for compliance.
3. The Commissioner does not require further steps.

#### **Request and response**

---

4. On 15 May 2023, the complainant wrote to NHSE and requested information in the following terms:  
"1) Who is responsible for the costs of the NHSE review into the North East Ambulance Service NHS Foundation Trust?"

- 2) How much has the NHSE review into the North East Ambulance Service NHS Foundation Trust cost to date?
- 3) How much was/is being paid to Dame Marianne Griffiths to chair the NHSE review into the North East Ambulance Service NHS Foundation Trust?
- 4) What date was the Jennifer Stanley investigation ( May 2020 ) supplied to NHSE?
- 5) Who supplied NHSE with the Jennifer Stanley Investigation?
- 6) When did NHSE first become aware of the Jennifer Stanley investigation of the North East Ambulance Service NHS Foundation Trust. The investigation in question is said to have concerned the doctoring of reports, bullying of staff, governance and culture, along with allegations of fraud at the trust?
- 7) Open source information suggests that Jennifer Stanley, currently sits on the Health & Safety Investigation Branch (HSIB) advisory panel, a body which is hosted by NHSE.
  - (i) Has Jennifer Stanley ever sat on the HSIB advisory panel?
  - (ii) Is Jennifer Stanley a current HSIB advisory panel member?
  - (iii) On What date was Jennifer Stanley appointed to this role at the HSIB?"
5. As the complainant did not receive a response, they complained to the Commissioner on 14 June 2023.
6. The Commissioner wrote to NHSE on 21 June 2023 to request that it responds to the complainant's request within 10 working days.
7. NHSE responded on 4 July 2023. It said that it was unable to continue processing the request until the complainant provided clarification in respect of question 2 of the request. It asked the complainant to clarify what costs they were specifically seeking and advised the complainant that it can provide legal fees, travel and accommodation expenses and commissioning costs of the review. NHSE however pointed out that there are other costs associated with the review but NHSE will not be able to quantify them, for example, how much it has cost NHSE for allocating its staff to support the review.
8. The complainant responded on 5 July 2023. They stated that NHSE's request for clarification was unreasonable, as it had already identified the costs information that is available. They therefore felt this was a

delaying tactic. But to respond to its request, the complainant confirmed that they are seeking the commissioning costs of the review, travel and accommodation expenses and legal fees.

9. NHSE responded on 2 August 2023. It responded to question 2, providing the total cost of the review and then legal costs and travel, accommodation and expenses separately. NHSE advised again that it was unable to disaggregate internal commissioning support costs. NHSE failed to respond to the remainder of the request, as detailed in paragraph 4 above.
10. The complainant requested an internal review on 5 August 2023. They stated that NHSE had not answered the remaining elements of their request and disputed that it was unable to separate costings data.
11. NHSE carried out an internal review and notified the complainant of its findings on 18 August 2023. It provided its response to the remaining elements of the request. Concerning the costs provided, NHSE explained again that it is unable to disaggregate the costs associated with commissioning support as this is not recorded. It stated for context, no single individual was employed to provide this support, which was on a 'as required' basis. It therefore concluded that it does not hold any further information in relation to question 2 of the request, to that already disclosed.

## **Scope of the case**

---

12. The complainant contacted the Commissioner on 22 August 2023 to complain about the way their request for information had been handled. They are dissatisfied with NHSE's response to question 2 of their request and believe NHSE should hold and therefore should be able to provide disaggregated support costs. The complainant also stated that they required more granular information about the legal costs disclosed and the names of those who received payments for legal advice.
13. The complainant's request for more granular information concerning the legal costs disclosed and the names of those who received payments for legal costs does not fall within the scope of their original request, as quoted in paragraph 4 above. It is not information that was originally requested. As the Commissioner is limited to considering the request, as worded, these concerns are out of the scope of the Commissioner's investigation. The Commissioner communicated this to the complainant in his correspondence dated 12 October 2023.
14. The Commissioner considers that the scope of his investigation is to consider NHSE's handling of question 2 of the request and whether

NHSE has now complied with the requirements of FOIA. He will also consider whether there has been any procedural breaches of FOIA.

## Reasons for decision

---

15. Section 1(1) of FOIA states that any person making a request for information is entitled to (a) be informed in writing by the public authority whether it holds information of the description specified in the request and (b), if that is the case, to have that information communicated to them.
16. Section 1(3) confirms that where a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
17. Section 10 of FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the 20<sup>th</sup> working day following the date of receipt.
18. Question 2 of the complainant's request asked for "How much has the NHSE review into North East Ambulance Service NHS Foundation Trust cost to date?". The Commissioner considers this is clear and the information falling within scope was the total cost of the review to date i.e. just one total figure. He does not consider there is any other interpretation.
19. However, NHSE sought clarification from the complainant under section 1(3), as it believed it was unable to process the request further until that clarification was provided. It explained that it could only provide legal fees, travel and accommodation expenses and commissioning costs. NHSE confirmed to the complainant in this correspondence that it was not able to quantify other costs and used the cost to NHSE for allocating its staff to support the review as an example.
20. The complainant responded, saying that they did not feel clarification was required and that their request was clear, but to answer the correspondence they were seeking what NHSE had listed, which was commissioning costs, travel and accommodation expenses and legal fees i.e. the costs NHSE confirmed that it does hold and was able to provide. The Commissioner considers this correspondence then reset the scope of this element of the complainant's request and it is noted that the complainant made no comment or concern, or indeed said, that they required or were dissatisfied that NHSE could not provide more aggregated information of support costs.

21. NHSE responded on 2 August 2023 and provided the information it said it holds and the information the complainant said they required. The Commissioner considers this information meets the terms and scope of this element of the complainant's request, as set on the provision of the clarification NHSE felt it needed.
22. At internal review stage, the complainant then raised concerns that NHSE cannot disaggregate costs so as to provide support costs. However, the Commissioner does not consider such information falls within the scope of the original wording of the request or the wording of the request following clarification. The complainant did not request this information at either stage. If the complainant expected more than the total figure originally provided or the total costs NHSE subsequently said it could provide, they should have made this clear at the time the request was originally made and when clarification was sought from NHSE.
23. As NHSE has now provided the information that does fall in scope, the Commissioner is satisfied that NHSE has now met its obligations under FOIA.

### **Procedural matters**

24. The Commissioner does not consider that clarification was required. He also notes that NHSE failed to respond to the complainant's request within 20 working days of receipt. The Commissioner therefore finds NHSE in breach of section 10 of FOIA.
25. NHSE also communicated information to which the complainant was entitled late, the Commissioner has therefore recorded a breach of section 1(1)(b) of FOIA.

## Right of appeal

---

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: 0203 936 8963

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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**