

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2023

Public Authority: Croydon Health Services NHS Trust
Address: 530 London Road
Croydon
CR7 7YE

Decision (including any steps ordered)

1. The complainant has requested information from Croydon Health Services NHS Trust (the Trust) about applicants for jobs. The Trust refused to provide the information, citing section 22 (future publication) of FOIA. Much later it provided some information but refused the request as a whole under section 12 of FOIA (cost of compliance).
2. The Commissioner's decision is that the Trust has cited section 12(1) of FOIA appropriately. He also accepts that the Trust could not offer any meaningful advice and assistance, given the context of the request. However, the Trust breached sections 1(1), 10(1) and 17(1) of FOIA in terms of the timeliness of its response.
3. The Commissioner does not require further steps.

Request and response

4. On 23 June 2022 the complainant wrote to the Trust and requested information about job applicants. The request is too lengthy to include here but appears in an annex at the end of this decision notice. The complainant had to chase a response on 8 August 2022.

5. The Trust responded on 26 August 2022 and refused to provide the requested information, citing section 22 of FOIA (Information intended for future publication). The Trust stated that it intended to publish the information within six months.
6. On 29 August 2022 the complainant asked for an internal review querying the refusal notice and arguing that the provision of the information was in the public interest.
7. The complainant again asked for a review on 20 November 2022 querying whether the data had been published and, if not, when it would be published.
8. Almost ten months later, on 12 September 2023, the complainant wrote again to the Trust to ask where the published data could be located.

Scope of the case

9. The complainant contacted the Commissioner on 28 September 2023 to complain about the way their request for information had been handled.
10. On 9 October 2023 the Commissioner wrote to the Trust to say that he was accepting the complaint without an internal review. The Trust then said that it intended to carry out a review. The Commissioner emphasised that any review needed to be carried out as soon as possible, given the passage of time.
11. After the Commissioner began his investigation, the Trust provided another response to the complainant on 19 October 2023. This provided some information and links to the annual report.
12. Subsequently the Commissioner wrote to the Trust with further queries. He put to the Trust some points that the complainant had made to him in the light of the latest response. He explained that the complainant had informed the Commissioner that the link to the annual report (NHS England Workforce Race Equality Standard) did not provide all the requested information. The following provides some examples of what is missing from the response, it:
 - Does not report against the professional categories requested
 - Does not split out Asian, Black, Mixed, Other, White, Unknown/do not wish to say candidates (it uses White & BAME)

- Does not give the numbers of candidates by profession and ethnicity who applied, were shortlisted and were offered in the year 2021-22 or the nearest 12 month period possible at the point at which the request was made.
 - Does not give the expenditure on overseas nurse recruitment or the numbers recruited in the detail requested.
13. The Trust sent a further response to the complainant on 30 November 2023 which included its previous response. It provided some information but cited section 12 of FOIA (cost limit) as its reason for not being able to provide all the information:
- “To produce the requested data for all completed campaign activity would require us to extract the data from TRAC and other sources and undertake a manual analysis to produce the report. This would take over 18 hours and therefore Section 12 is engaged.”
14. In light of this, the Commissioner asked the complainant if they were content. The complainant was not content and asked that the Commissioner continue his investigation.
15. The Commissioner considers that the scope of his investigation is to decide whether the Trust has cited section 12 appropriately and to look at any procedural issues.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

16. Section 12(1) of FOIA states that:
- “(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”
17. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Fees Regulations’). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the Trust. In estimating whether

complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
 - 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.
18. 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 IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.¹
19. Please note that the Commissioner underpins the reasons for this decision with the analysis in his recent decision notice, [IC-261370-F4T1](#) as it is a closely linked case. Both public authorities are in the South West London Health & Care Partnership which comprises of six Clinical Commissioning Groups (CCG) – Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth - and both use the TRAC system.
20. The Trust provided some Equality, Diversity and Inclusion information for 2021/22 but stated the following:

“To produce the requested data for all completed campaign activity would require us to extract the data from TRAC and other sources and undertake a manual analysis to produce the report. This would take over 18 hours and therefore Section 12 is engaged.”

Without doing so it would be unable to “produce accurate information”. The Trust is part of “SWL [south-west London] campaigns” which means that “any campaign managed outside of TRAC” would require it to

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>
(para 12)

disaggregate from the other Trusts involved. "TRAC reporting functionality does not allow the Trust to scrutinise the data captured for reporting."

21. The Trust further went on to explain that TRAC is its applicant tracking system. "The data retention period is 400 days." It describes the functionality of its reporting system as "very poor" and that it does not provide accurate data. In other words, data produced from TRAC could not be relied on. The Trust tells the complainant that -

- "TRAC will report on all open campaigns within the period requested – these will be both complete and incomplete campaigns (it does not differentiate). An incomplete campaign means that you will not have data for each stage of the recruitment episode."

22. The Trust described the functionality of TRAC as –

"... designed to process standard campaigns only so not all recruitment activity is processed through TRAC:
i) large multiple hire campaigns are only partly managed within TRAC, at the back end of the campaign;
ii) non typical campaigns, for example International Recruitment and Recruitment Events, are managed outside of TRAC."

In order to "produce accurate and reliable data" certain actions would be required that would bring the Trust over the fees limit (18 hours) as it would require the following -

- Extract the data from TRAC and other sources, undertake a manual review and analysis and produce the requested data set.
- There is no single report available; multiple reports would have to be utilised and then the data manually 'stitched' together.
- The data would have to be scrutinised for each individual applicant at each of the six recruitment stages that constitute the life cycle of applicants.
- This work would take between 15 minutes and 2 hours for each campaign dependant on the volume of applicants and the data source.
- On average Croydon manages 5,933 campaigns although they are concurrent and so 532 at any one time with 19,632 applicants for 2021/22.

23. The complainant supported their position by referring the Commissioner to a request they had made in 2021 where the data had been produced

by the Trust. The complainant also points out that the Trust replicated arguments that had been put forward in a related matter with a different Trust, to the extent that they have “cut and pasted text”.

24. The Commissioner accepts that this may be the case but the fact that the Trust uses the same TRAC system means that it is likely to provide a similar response.
25. The parameters the Trust has provided also means that if the Commissioner accepts this assessment, even the lower figure is many times beyond the statutory limit.
26. Despite the tardy and unsatisfactory responses from the Trust to the complainant, the Commissioner accepts that responding to the request would exceed the appropriate limit.

Procedural matters

27. Section 16 of FOIA requires a public authority to provide advice and assistance where it is reasonable to do so. The section 45 FOIA Code of Practice states that a public authority’s advice and assistance obligation will be triggered when it relies on section 12 to refuse a request. If there is no reasonable way in which the request could be refined, the public authority should inform the requester that the request cannot be meaningfully refined.
28. The Trust had firstly cited section 22 of FOIA and had not needed to offer advice and assistance. It did not cite section 12 of FOIA until over a year after the request was received. The Trust did not offer any advice or assistance.
29. Although the Trust had clearly breached the FOIA in the length of time it took to cite section 12, the Commissioner accepts that the Trust was not able to provide meaningful advice and assistance to the complainant because the complainant required the requested information and did not accept that it could not be provided from the TRAC system.
30. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them. Where a public authority considers the information or some of the information is exempt from disclosure, section 17 of FOIA requires it to issue a refusal notice, explaining why.
31. Section 10(1) of FOIA requires these actions to be taken within 20 working days of receipt of the request.

32. The Trust issued a refusal notice, indicated it held the requested information, and disclosed relevant information outside the 20-working day requirement and so breached sections 1(1), 17(1) and 10(1) of FOIA.

Other matters

33. Despite the fact that the Trust withdrew its application of section 22 of FOIA, the Commissioner is concerned that it did not specify earlier that it was no longer relying on it. There had by then been many months to reconsider its position.

34. Understandably the complainant has suggested to the Commissioner that the Trust must hold the requested information in order to be able to publish it. They also pointed out that the links provided by the Trust did not provide them with the data they had requested. The complainant argued that,

“in order to publish this data themselves at a future date I believe that the Trust would have to produce the reporting within 35 days of my request (the system I believe they use keeps data for 400 days)”.

35. The Commissioner would like to remind the Trust of his guidance:

“A general intention to publish some information will not suffice. It is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication.

The information that the public authority intends to be published must be the specific information the applicant has requested.”² [Commissioner’s emphasis]

36. The section 45 code of practice³ recommends that public authorities complete the internal review process and notify the complainant of its

² [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](#)

³ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

findings within 20 working days, and certainly no later than 40 working days from receipt.

37. In this case the complainant requested an internal review on 29 August 2022. The Trust did not provide the review until 19 October and 30 November 2023. This is some 12/13 months beyond the maximum recommended timeframe of 40 working days and the Commissioner considers it to be unacceptable. He has recorded this delay for monitoring purposes.

Right of appeal

38. 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

39. 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.
40. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

41. Under the Freedom of Information Act, please provide me with the following:

Part One

Numbers of Job Applicants, Applicants Shortlisted for Interview, and Applicants Offered a position after interview, by ethnicity and for the following groups of staff, for the period 1 April 2021 to 31 March 2022 (2021-or, if not available, the most recent 12-month period – in which case please state which period the data is for):

1. All AfC Roles at bands 1 – 8b
2. All AfC Roles at 8c and above

3. All Registered Nursing Roles at Band 5
4. All Registered Nursing Roles at Band 8c and above

5. All Registered Midwives at Band 5
6. All Registered Midwives at Band 6

7. All Allied Health Professionals
8. All Occupational Therapists
9. All Physiotherapists
10. All Dieticians
11. All Radiographers

12. All SAS Roles
13. All Medical Consultant Roles

14. All Band 5 Bank Registered Nurse recruitment

Please supply the numbers of candidates (not the %) for the following Ethnicity Descriptors:

- Asian (including Chinese)
- Black
- Mixed (including Arab)
- Other
- White
- Unknown (including do not wish to say)

The above categories mirror the 2021 Census categories, please refer to the attached document setting out these category descriptors if further guidance is needed. If you use Trac please ensure that the Vietnamese, Japanese, Filipino, and Malaysian descriptors are included in the Asian category. Please note in particular that Chinese is listed as Other on Trac & should be re-classified as Asian in line with the 2021 census categories. This request is part of a larger research project. In order to avoid transcription errors please send the data as an Excel file in the following format:

Ethnicity	Number of Applicants	Number Shortlisted for Interview	Number Offered the Position
Asian			
Black			
Mixed			
Other			
White			
Unknown			

Part 2

Please provide the level of expenditure in the 2021-22 financial year on the recruitment of overseas nurses.

This request is part of a larger research project. In order to avoid transcription errors, please use the following format and send as an Excel file:

Number of Nurses Recruited in 21-22	Funding allocated to the trust for this purpose by NHSEI	Total cost to the trust (excluding NHSEI funding) of overseas nurse recruitment. This should include all associated expenses such as trust staff costs, Agency costs, flights, accommodation, etc. "	Total