

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2015

Public Authority: NHS Business Services Authority
Address: Stella House
Goldcrest Way
Newburn Riverside
Newcastle-Upon-Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant has requested information on the number of claimants who have had their permanent injury benefit reduced. The NHS Business Service Authority (BSA) refused the request under section 12 on the basis that the cost of complying would exceed the appropriate limit.
2. The Commissioner's decision is that the BSA was entitled to rely on section 12.
3. The Commissioner does not require the BSA to take any further action in this matter.

Request and response

4. On 27 June 2014, the complainant wrote to a Minister of the Department of Health (DoH) and requested information in the following terms:

"How many people have had their permanent injury benefit reduced because of the change from sickness benefit to employment support allowance?"

5. The DoH passed the request to the BSA on 3 July 2014 and the BSA responded on 29 July 2014. The BSA refused to comply with the request explaining that to do so would exceed the appropriate limit established under section 12 of FOIA. It did however provide an indication of the

number of files it would be able to search within the appropriate limit and offered to answer the request based on such a sample.

6. The complainant did not pursue the offer to refine his request and instead contacted the Commissioner to raise his concerns about the BSA's application of section 12 on 15 December 2015. The Commissioner contacted the BSA and the BSA agreed to accept the complainant's letter to the Commissioner as a request for internal review.
7. Following an internal review the BSA wrote to the complainant on 3 February 2015, explaining the costs involved in complying with his request in greater detail. It maintained its position that responding to the request would exceed the appropriate limit.

Scope of the case

8. The complainant originally contacted the Commissioner about how his FOI request had been handled on 13 November 2014. At this stage there had been no internal review of the request. However following his letter of 15 December 2014 and the completion of the internal review the complainant contacted the Commissioner again, on 27 February 2015, to say he wanted a formal decision on the application of section 12.
9. During this exchange of correspondence the complainant argued that before implementing any changes to the benefits system, the DoH would have calculated how many people were expected to have their injury benefit reduced as a result of the change from sickness benefit to employment support allowance. At the outset of his investigation the Commissioner wrote to the complainant on 13 March 2015 and explained that the investigation would focus solely on how the BSA had handled the request as originally phrased. The request as phrased was for information on the number of claimants who had actually had their injury benefit reduced as a consequence of the move to employment support allowance at the time of the request. It is not for an estimate of the number likely to be effected made in advance of the changes being implemented.
10. Therefore the matter to be decided is whether it would exceed the appropriate limit to provide the number of claimants who had had their permanent injury benefit reduced as a consequence of the change to employment support allowance. If the appropriate limit would be exceeded the BSA is entitled to rely on section 12 to refuse the request.

Background

11. Although the request was originally made to the DoH it was passed to the BSA. This is because the administration of the permanent injury benefit is the direct responsibility of the BSA. The BSA is a Special Health Authority and as such is a separate public authority for the purposes of FOIA.
12. The permanent sickness benefit is available to any NHS member of staff who has suffered a permanent reduction in their earning ability following an injury or disease attributable to their employment within the NHS.

Reasons for decision

13. Section 12 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 doing so would exceed the appropriate limit.
14. The appropriate limit is a cost limit set out in regulations that were introduced under the Act. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the 'Fees Regulations' set the appropriate limit for non-central government departments, such as the BSA, at £450. Very often the costs of dealing with a request relate to staff time. The Fees Regulations set the cost that can be charged for staff time at £25 per hour. They also specify the activities that a public authority can take into account when estimating whether the appropriate limit would be exceeded. Under regulation 4(3) these activities are restricted to the time taken in determining whether the information is held, locating that information, retrieving that information or a document containing the information and extracting the information from such a document.
15. Therefore if it would cost the BSA more than £450, which at £25 per hours equates to 18 hours, to identify, locate and retrieve the requested information it is entitled to refuse the request under section 12.
16. The BSA has informed the Commissioner that there are approximately 32,500 individuals in receipt of permanent injury benefit. Each claimant has their own, manual, file. The files are not held electronically.
17. The BSA produces monthly management reports which identify those claimants whose benefits have changed during that month. Using the monthly management reports the BSA know that changes have been made to the benefits of 2,985 claimants since 1 April 2009. This is the

date from which the employment support allowance was first taken into account when assessing permanent injury benefit.

18. However the reports do not specify the reason for the changes. Therefore it would be necessary to go through all the relevant management reports, draw up a list of those claimants whose benefits had changed over the relevant period. It would then have to interrogate each manual file individually to identify those cases where the change referred to was a reduction due to the move to employment support allowance.
19. BSA estimate that it would take 3 hours to draw up a list of the 2,985 files which would need to be examined. This was referred to in the BSA's correspondence with the complainant and the Commissioner as the production of a picking list.
20. BSA has explained that the files are held in a number of storage units which reach from floor to ceiling. Before any unit can be accessed it has to be moved into position by winding a handle. To extract a particular file it would be necessary to first identify the unit in which it was held, move that unit into position and then retrieve the file from the shelf it sits on within the unit. This in itself will often require the positioning of a ladder. Once off the shelf the file would be placed in a labelled box and transported to the offices for examination. This exercise would take 5 minutes for each file.
21. Next each extracted file would have to be logged and placed in a rack awaiting the attention of an administrator. This would take 1 minute per file.
22. Once the 2,985 files have been retrieved, each would have to be examined to find the reason why that claimant's benefit had changed. The information on each file is simply added in chronological order. Therefore how easily the information on the benefit change could be found would depend on how much work had been done on each file since April 2009. The more work, the more information would have to be sifted through to find the relevant information. The BSA has estimated that this would take on average 7 minutes per file.
23. These estimates are not based on a specific sampling exercise. However prior to the request being received the BSA had carried an exercise which involved interrogating all 32,500 files and the estimates are informed by that experience. The BSA has said that it is confident the figures are realistic.
24. The total time to retrieve each of the 2,985 files would be 13 minutes per file, on top of which the 3 hours for producing the picking list would

have to be added. This gives a total of $2,985 \times 13 = 38,805$ minutes divided by 60 = 646.75 hours plus 3 hours = 650 hours.

25. The Commissioner has no grounds for disputing the BSA's estimate. However even if the time involved in the tasks outlined were dramatically reduced to half, this would still mean the time taken to retrieve the relevant files and then examine each one to extract the requested information, would be well over the 18 hour threshold set out in the Fees Regulations. The Commissioner is satisfied that complying with the request would exceed the appropriate limit and that the BSA is therefore entitled to refuse the request under section 12. The Commissioner does not require the BSA to take any further action in this matter.

Other Matters

26. Under section 16 of FOIA, where a public authority refuses a request because the cost of compliance would exceed the appropriate limit, the public authority is required to provide the applicant with advice and assistance aimed at assisting the applicant to reframe their request.
27. When the BSA refused the request on 29 July 2014 it did provide a breakdown of the costs that would be involved in dealing with the request and explained that a limited number of the files could be searched within the appropriate limit. It also drew the complainant's attention to information collected as part of a National Fraud Initiative which gave an indication of the number of claimants who were in receipt of employment support allowance and had had their injury benefits revised. The BSA offered to search a number of the files identified in the National Fraud Initiative to determine the reasons for the revisions.
28. In light of the above the Commissioner is satisfied that the BSA took reasonable steps to help the complainant refine his request.

Right of appeal

29. 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@hmcts.gsi.gov.uk

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

30. 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.
31. 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

Steve Wood
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