

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2018

Public Authority: Cambridgeshire & Peterborough NHS Foundation Trust

Address: Elizabeth House
Fulbourn Hospital
Fulbourn
Cambridge
CB21 5EF

Decision (including any steps ordered)

1. The complainant has requested information relating to a meeting of the Cambridgeshire and Peterborough Foundation Trust Council of Governors held on 13 September 2017.
2. The Commissioner's decision is that Cambridgeshire & Peterborough NHS Foundation Trust (the trust) has incorrectly relied on section 12 (cost limits) to withhold the requested information.
3. As the information is no longer held, the Commissioner is unable to order its disclosure.
4. The Commissioner also finds that the trust has breached section 10 (1) of the FOIA as it did not provide a response within the specified timescale.
5. As the trust has provided a response no further steps are required.

Request and response

6. On 14 September 2017, the complainant wrote to the trust and requested information in the following terms:

"In relation to the Cambridgeshire and Peterborough Foundation Trust Council of Governors Meeting on the 13th of September 2017 could you please release:

- *Any audio recording of the meeting*
 - *The presentation slides shown at the meeting*
7. The trust responded on 14 November 2017 and provided the presentation slides. However, it refused to provide an audio recording of the meeting as it considered it was exempt under section 40(2) of the FOIA.
 8. Following an internal review the trust wrote to the complainant on 4 January 2018. It maintained its original position and additionally cited section 12 (cost).

Scope of the case

9. The complainant contacted the Commissioner on 22 January 2018 to complain about the way his request for information had been handled.
10. In addition to the issues above, the complaint raised concerns that information had been destroyed after he had made his request, and therefore the trust could be guilty of an offence under section 77.
11. The Commissioner referred to her guidance with regard to the destruction of information¹ and advised that in this case it appeared unlikely that an offence under section 77 had occurred.
12. The complainant did not pursue this matter, and provided no further information or evidence to support his concern.
13. The Commissioner therefore considers the scope of this case to be to determine if the trust is entitled to rely on sections 12 and 40(2) as a basis for refusing to provide the withheld information.

Reasons for decision

Section 12 – costs exceed appropriate limit

14. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
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¹ <https://ico.org.uk/media/for-organisations/documents/1160/retention-and-destruction-of-requested-information.pdf>

- either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
15. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 SI 2004 No 3244. These are known as the 'Fees Regulations' for brevity. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Group.
16. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
17. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

18. As is the practice in a case such as this, the Commissioner asked the trust to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
19. The Commissioner has referred to her own guidance² In its submission to the Commissioner the trust explained that since the recording was

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

taken and the original request was responded to, the individual who originally handled this request and stored the audio recording has since left the trust. Upon subsequent investigation, it discovered that the same individual also erased the recording on the understanding that the matter had been successfully resolved. The erasure of the recording is standard practice following the formal agreement of the meeting minutes and was done so following the conclusion of the individual's investigation into this matter on behalf of the trust.

20. Secondly, it set out its summary of the work undertaken for Section (12). It explained that there was no cost attached to determining whether the information was held, nor locating it. The trust explained that it knew the information was held, and where the recording device was.
21. With regard to retrieving the information, it explained that the recording was approximately 4 hours long. The trust considered that the recording would need to be listened to, and stopped at various points and replayed to note elements that would require redaction. It considered that this would take an additional 2 hours.
22. The next stage is to extract the information. The trust explained it would need to procure a system for downloading the recording from the device and it estimated this would take 2 hours. Installing the system would take a further hour and downloading the recording would take approximately 30 minutes. The cost at this stage is estimated to be £237.50
23. The trust then explained that it estimated it would take 7 hours to redact sensitive/personal information from the recording, costing £175. However, the staff time taken, or likely to be taken, in removing any exempt information in order to leave the information that is to be disclosed, often referred to as 'redaction', cannot be included as part of the costs of extracting the requested information.
24. Also, a public authority cannot include the staff time taken, or likely to be taken, in considering whether any exemptions apply in the costs estimate as this activity does not fall within the list of permitted activities.
25. The trust estimated that the total cost would be £525, however, as it cannot include the time taken for redaction it £175 must be deducted from that estimate, which leaves an estimated cost of £350, which is within the appropriate cost limit.
26. The Commissioner therefore finds that the trust cannot rely on section 12 to withhold the information. As she has found that section 12 does not apply and the information is no longer held the Commissioner has not gone on to consider section 40(2).

Section 10 – time for compliance

27. Where a public authority receives a request for information it is obliged under section 1(1) to confirm whether it holds that information, and if so, subject to the application of any exemptions, to communicate that information.
28. Section 10 of FOIA states that a public authority must comply with its obligations under section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
29. The request was made on 14 September 2017 and the trust did not respond until 14 November 2017 which is clearly a breach of section 10. As the trust did issue a response the Commissioner does not require any further action in this regard.

Other matters

30. During the course of the investigation it became clear to the Commissioner that the requested information was no longer held. She therefore sought further clarification with regard to the deletion of the information and the trust's retention policy.
31. The trust explained that the recordings are normally deleted once the minutes are signed off. In this case, as the request was received the day after the meeting the recording was retained.
32. The trust confirmed that the minutes were signed off in December 2017 but due to the request, the recording was retained. The trust issued its response on 14 November 2017 and retained the recording until May 2017. The trust explained that the existing Trust Secretary post-holder deleted the recording as part of her 'close down' of actions before leaving the Trust in May 2017.
33. It further confirmed that the trust has no written retention policy for recordings, however it is now going to review this in light of this investigation.

Right of appeal

34. 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

35. 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.
36. 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

Pamela Clements
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