

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2012

Public Authority: Cambridge University Hospitals NHS Foundation Trust

Address: Addenbooke's Hospital
Cambridge Biomedical Campus
Hills Road
Cambridge
CB2 0QQ

Decision (including any steps ordered)

1. The complainant requested information from Cambridge University Hospitals NHS Foundation Trust ('the Trust'). He asked for information about patients treated who were not eligible for NHS treatment and how they were charged.
2. The Trust responded that it considered that the exclusion found in section 12(1) of FOIA applied, because it could not obtain the information within the cost limit. The complainant complained to the Information Commissioner ('the Commissioner').
3. The Commissioner's decision is that the Trust has correctly relied on section 12(1). However, it failed to offer reasonable advice and assistance and so breached the requirements of section 16(1).
4. The Commissioner has considered what would constitute reasonable advice and assistance and has concluded that there are only two possible options. He has elected to say what they are in this decision notice and therefore used his discretion not to order any remedial steps in this case.

Request and response

5. On 27 August 2011 the complainant wrote to the Trust and requested the following:

'1. Since 2010 how many patients (not eligible for free NHS treatment) were admitted and treated by A&E department of the hospital?

2. How many of these patients continued to receive further treatment at the hospital after the emergency was over?

3. How many of the patients in question 2 paid for their treatment directly through their health insurer?

4. How many of the patients in question 2 were required to pay for their treatment upfront and then forced to collect their costs from their medical insurer?'

6. On 7 September 2011 the Trust issued its response. It confirmed that it considered that it was appropriate to apply section 12(1) in this case. This was because it would take more than £450 of resources to answer. It provided its internal review details.
7. On the same day, the complainant requested an internal review. He explained that he considered that the requested information ought to be easily available through checking the payments it had received.
8. On 6 October 2011 the Trust communicated the results of its internal review. It upheld its position. It explained that the information was only held in paper records in its 'paying patients' department. It confirmed that approximately 80-100 patients are referred to that department each month, but some don't need to pay. It would need to check every paper file in the relevant timeframe to answer the request and that would take more than 18 hours.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. On 7 December 2011 he agreed that the Commissioner's investigation would focus on:
 - Whether the Trust applied section 12(1) appropriately to the request that he made on 27 August 2011; and
 - Whether the Trust offered adequate advice and assistance to assist him in potentially narrowing that request.

11. The Commissioner has therefore considered the application of section 12(1) and the operation of section 16(1) in this case.

Reasons for decision

12. The exclusion that is being relied on in this case is found in section 12(1) of FOIA which states that:

'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.'

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") provide that the cost limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
14. If a public authority estimates that complying with the requests would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
15. The Commissioner will now consider whether the Trust was entitled to apply section 12(1) to the four requests. What the Commissioner must initially consider is whether the Trust is entitled to combine the work together for these four requests, or whether each request should be considered individually.
16. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of Fees Regulations that states:

'5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.'

17. In order to aggregate all four requests for the purposes of section 12(1) the Commissioner must determine whether they relate to any extent, to the same or similar information.¹
18. The Commissioner invited the Trust to make its submissions concerning this point. It replied that it believed that all four requests are similar to some extent. They are all about how it collects money from those not entitled to free treatment and requests 3 and 4 directly require the answers to the earlier questions. The Commissioner agrees with the Trust that the requests are to some extent similar to one another and this part of the test is therefore satisfied.
19. As well as the four requests being similar it is also necessary for them to be submitted within 60 working days and made by the same person. In this case they were submitted all at once by the same person and the Commissioner has therefore determined that the Trust is able to aggregate the costs for all four requests.
20. The Commissioner's subsequent analysis into the operation of section 12(1) will have two parts, which are:
 1. To explain Trust's relevant estimate; and
 2. To consider whether that estimate only related to the relevant prescribed activities and whether it is reasonable.
21. The Commissioner will consider each part in turn:

¹ This has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* - [EA/2007/0124](#). It emphasised that the words in Regulation 5(2)(a) should be given their natural meaning (at paragraph 43).

What was the Trust's relevant estimate?

22. The Trust provided the Commissioner with its detailed estimate. While providing its estimate, it explained that it understood that it could only include the work that was outlined in Regulation 4(3) of the Fees Regulations, which allows only the following four activities to be considered:

"(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it."

23. It also understood that the onus was on it to prove that the work required to process the request would take longer than 18 hours and provided the Commissioner with a detailed explanation about what work would need to be done.

24. It explained that the only way it could answer the request would be to work out which of its 'Paying Patients' customers' treatment commenced in its Accident and Emergency department ('A&E').

25. It explained that all patients receive free Accident and Emergency treatment. Every patient that gets admitted (when conscious) is asked whether they have lived in the UK for the last twelve months. This information is recorded on the patient administration system and referred on to its 'Paying Patients' department.

26. However, while all of these individuals are referred to the 'Paying Patients' department, it is not necessarily the case that they are all in eligible for free NHS treatment. The question acts as a screen. For individuals who have been in the UK for the last twelve months, they definitely do not need to pay for subsequent treatment. For those who have not, all that can be said is that they **may** need to pay.

27. There are two options for patients admitted to A&E:

1. They are then discharged and no further appointments are made. In this case 'Paying Patients' would strike the person off their list. It would not know whether or not the person was actually entitled to free treatment; or

2. The individual is either moved to another department or books an outpatient appointment. Different records are kept for each of these scenarios:
 - i. If the patient is an inpatient (so remains on its ward) 'Paying Patients' monitors these individuals and interviews the patients to determine whether or not they are entitled to free care. If they are not, it sets up a paper file, an account and makes records on an inpatient database to enable it to invoice the patients; or
 - ii. If the patient is an outpatient, 'Paying Patients' interviews these individuals to see whether they are entitled to free care. If they are not, it fills out a form which is kept in an outpatient file in month order. An account is set up on the finance billing system and the invoice number is cross referenced to the form.

28. To work out the information requested, the Trust would first have to check the inpatient database to find those individuals who were not entitled to free treatment (and became inpatients). It would then need to check the following four things in relation to the Paying Patients records (considering that it must also consider whether outpatients were entitled to free treatment):
 - Cross reference the information on the patient administration system with all of its Paying Patients files;
 - Check every one of the paper files that have been identified to work out how many invoices were issued;
 - Cross reference each of those invoices (using their reference numbers) with the finance billing system (run by their separate Finance department) to see if they had been paid, and if so, whether who paid is noted; and
 - If it has not done so, to reobtain the payment medium, where possible.

29. It should be noted that even undertaking this work would not produce an accurate number for question **(1)**. While it would pick up the right information for question **(2)**, the Trust does not know whether those patients who were discharged straight after A&E would or would not have been eligible for treatment. Therefore the number of patients ineligible for free treatment would not necessarily be the complete number.

30. In addition, it would also not be possible to check the invoices and its finance billing system because **who** paid bills is not always recorded. The Trust's interest is ensuring that it gets paid and its system only records that it gets paid and the payment medium by which it does get paid (ie cheque, cash etc). The only way to work out who paid in many occasions would be to check the individual files and records of payment.
31. The Trust explained that Paying Patients receives approximately 80-100 referrals a month. Therefore the approximate number of files that would need to be checked for the period of 20 months embraced by the request was 1800 files (90 x 20).
32. It explained that the estimated amount of time to do the four activities outlined above (in paragraph 22) in undertaking the searches noted in paragraph 28 above for one patient would be:
 - To consider whether or not the person was entitled to free NHS treatment - this would take 2 minutes; and
 - If not, to check the paper file invoices against the finance billing system – this would take at least 4 more minutes.
33. It explained that it also undertook a trial run for five random overseas patients and that took it 27 minutes of work to gather the requested information that it held.
34. In light of the information above, the Commissioner considers that four minutes is the minimum average amount of time that it would take to undertake this work for one file.
35. This would make the Trust's estimate be:

1800 (approximate number of files) x 4 (average number of minutes for one file) = **120 hours**.
36. This greatly exceeds the 18 hour limit. The Commissioner will now explain why he considers the estimate is reasonable.

Was the estimate reasonable?

37. The issue of what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
 - "Only an estimate is required" (i.e. not a precise calculation);
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3);

- Time spent considering exemptions or redactions cannot be taken into account;
 - Estimates cannot take into account the costs relating to data validation or communication;
 - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - Any estimate should be *"sensible, realistic and supported by cogent evidence."*
38. Following those points, the Commissioner is satisfied that the Trust has only included the activities that are specified in Regulation 4(3) in its estimate. He is also satisfied that it hasn't included any time for considering redactions or any time taken to consider validating the information (indeed the information would be likely to remain inaccurate for the reasons outlined in paragraphs 29 and 30 above).
39. He is satisfied that the estimate is based on the circumstances of this case. The Commissioner has also considered whether or not there are reasonable alternatives in this case.
40. When considering this issue the Commissioner has been guided by the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042] which provided some general comments on alternative methods of extraction such as whether there is an alternative so obvious to consider that disregarding it renders the estimate unreasonable.
41. The Commissioner has therefore considered whether such alternatives exist in this case. The Trust has informed the Commissioner that it had carefully considered whether there were any alternatives and it could confirm that there were none.
42. The complainant considered that it ought to be possible to find the information through checking its payment system run by Finance. This is not a reasonable alternative because it would not highlight those patients who started in A&E, nor would it necessarily explain who paid. The system also does not record the information per patient; rather it considers how invoices were paid. Furthermore, some patients that pay are entitled to free treatment, but elect to be treated privately.
43. The Commissioner originally considered it may be possible to track individual patients from admission in A&E to payment through its inpatient database. However, this is not possible because A&E is free and as explained above there isn't a single integrated system that enables these statistic to be gathered. In addition, the system records those who have been referred to Paying Patients, but does not confirm

for outpatients whether or not they were entitled to free care. It is not possible to cut Paying Patients out of the search.

44. The Commissioner has also considered whether it would be possible to gather the information about who started in A&E from a database run by Paying Patients. However, there is no such database and the only way to check is to look at all the individual paper files.
45. The Commissioner also considered whether the process could be automated – for example the running of a report using SQL or something similar. This was not possible because the components of what was required were held on different systems and the work that is required is that to cross reference between them. There is also no uniformity in what is recorded and the records require human input to understand what is said during the cross referral process.
46. The Commissioner is content that the Trust has used all the tools that are available to it to narrow down the search. In this case, they do not enable the Trust to find all the requested recorded information within the cost limit.
47. Having considered all the relevant evidence above, the Commissioner is satisfied that there are no reasonable alternatives to the work specified above.
48. He is satisfied that the Trust has evidenced that to answer the request it would take more than 18 hours' work and that this estimate is based only on a reasonable assessment of the activities that are allowed by Regulation 4(3) of the Fees Regulations. He is satisfied that this estimate is *'sensible, realistic and supported by cogent evidence.'* He finds therefore that the Trust has applied section 12(1) correctly and thus no information needs to be provided to the complainant.

Procedural Requirements

Section 16(1)

49. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
50. Whenever the costs limit has been applied correctly, the Commissioner must consider whether it would be possible for the Trust to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the

Code. In this case the Commissioner has considered whether it would have been reasonable for the Trust to have advised the complainant to reduce the scope of his request.

51. The Trust admitted that it had not considered its obligations under section 16(1) in this case and agreed with the Commissioner that it should have done.
52. The Commissioner finds a breach of section 16(1) of FOIA in this case because the Trust did not provide the advice and assistance the complainant was entitled to.
53. However, he has chosen not to order any remedial steps in this case, because he agrees with the Trust that there were only two possible ways of narrowing down the request for the complainant:
 1. It could offer 6 months' information to address questions 1 and 2 alone (excluding those discharged straight away and providing that the complainant stayed within the original time period of the request January 2010 to 27 August 2011); or
 2. It could offer around 2 months' information to address all four questions. It explained that because there was a two step approach (noted in paragraph 32 above), it wasn't aware of the proportion of cases that would require both steps, but it would work up until the 18 hour limit.
54. The Commissioner has outlined these options and it is open to the complainant to consider whether either of the smaller subsets of information are of interest. If they are, the complainant is welcome to make a new request and this will need to be considered by the Trust under the terms of FOIA.

Right of appeal

55. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

56. 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.
57. 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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