

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

Public Authority: North West Ambulance Service NHS Trust

Address: Ladybridge Hall Headquarters
Chorley New Road
Bolton BL1 5DD

Decision

1. In a 21 part request, the complainant has requested a variety of information about North West Ambulance Service NHS Trust's processes, procedures and performance. Their complaint concerns the Trust's response to 16 parts of the request.
2. The Commissioner's decision is as follows:
 - The Trust has disclosed all the information it holds within scope of parts 18 and 21 of the request and complied with section 1(1) of FOIA in respect of those parts.
 - The Trust correctly applied sections 12(1), 21(1), 36(2)(c), 38(1) and 40(2) to the information it withheld regarding the remaining 14 parts of the request in scope of the complaint. The public interest favours maintaining these exemptions.
 - The Trust's handling of the request breached section 10(1) and 17(1) of FOIA but there was no breach of section 16(1).
3. It is not necessary for the Trust to take any steps.

Request and response

4. The complainant made the following information request to North West Ambulance Service NHS Trust ('the Trust') on 12 July 2021:

"1. A copy of your policy regarding triage for 999 calls, including 1. any escalation policy/protocols 2. repeat calls protocol 3. service delay protocol

2. A copy of any service level agreements/protocols/ policies regarding response categorisation; prioritisation and response times

3. If and where separate, a copy of your policy/protocol regarding reported stroke in 999 calls (including any local stroke pathway policies - including The Greater Manchester Integrated Stroke Delivery Network policy/protocol) and prioritisation, including any policy on stroke type identification (including any reference to prioritisation for patients for potential thrombolysis).

4. A copy of the integrated stroke pathway relevant to the North West (or other as applies to your service)

5. All training material/process documents for call handlers in regards to identifying a stroke/responding when a stroke is reported

6. A copy of any training/instructions/guidance etc regarding advising patients what to do in the event an ambulance will be delayed/is unavailable, including reference to guidance as to which hospital to attend

7. A copy of any training/instructions/guidance etc regarding advising patients on likely wait times

8. A copy of any correspondence between the CQC/The Greater Manchester Integrated Stroke Delivery Network/any other regulator or similar regarding acceptable response times

9. A copy of any correspondence between the CQC/The Greater Manchester Integrated Stroke Delivery Network/other regulator or similar regarding stroke pathways/handling

10. A copy of any upheld complaints(or equivalent) from any regulator/Ombudsman/Coroner/The Greater Manchester Integrated Stroke Delivery Network or similar regarding response times over the past five years

11. A copy of any upheld complaints (or equivalent) from any regulator/Ombudsman/ Coroner/The Greater Manchester Integrated

Stroke Delivery Network or similar regarding stroke assessment/triage/responses over the past five years

12. Any responses to the regulator, Ombudsman, Coroner or similar explaining what service improvements/improvement plan will be put in place

13. Any documentation regarding the availability of ambulances on the night of 19/20 June 2021, including any internal communications on prioritisation; instructions to staff on what to say about time estimates; instructions to staff on escalation

14. Any documentation regarding ambulances present at MRI on 19/20 June 2021

15. A copy of any protocol regarding requests by clinicians for (urgent) transfers between hospital sites, including within specific protocols for certain critical conditions such as stroke

16. Number of complaints received from Trusts in the past two years about ambulances failing to attend for urgent transfers

17. Number of complaints received from MRI regarding the ambulance service in the past two years

18. How many unallocated i. Category One and ii. Category Two calls were there at:

(a) 11.22 pm on 19 June 2021?

(b) 11:46 pm on 19 June 2021?

(c) 11:59 pm on 19 June 2021?

(d) 12:15 am on 20 June 2021?

(e) 12:30 am on 20 June 2021?

(f) 12:45 am on 20 June 2021?

(g) 01:00 am on 20 June 2021?

(h) 01:15 am on 20 June 2021?

(i) 01:30 am on 20 June 2021?

(j) 01:45 am on 20 June 2021?"

19. What % of commissioned capacity was NWAS operating at on 19 and 20 June 2021?

20. Please provide any written guidance for staff on recognising and reporting incidents, 'near misses' or similar.

21. With regard to request 1, within the 'Snapshot of All Unallocated Category 1 and Category 2 Emergency Incidents from 19th June 2021 23:15 to 20th June 01:45' are you able to confirm that the following figures are correct?

(d) 12:15 am on 20 June 2021? (i.e. C1 - 0, C2 - 48)?

(e) 12:30 am on 20 June 2021? (i.e. C1 - 1, C2 - 44)?

(f) 12:45 am on 20 June 2021? (i.e. C1 - 0, C2 - 45)?

The way the data is set out, along with the sudden fall in C2 calls, makes me think the figures may have been drawn from the incorrect time? Have the figures for 20 June 2021 for: 12:15 pm 12:30 pm and 12:45 pm been substituted in error?"

5. The complainant disputed the Trust's response to all parts of the request except parts 3, 4, 17, 19 and 20. The Trust's final position on the 16 disputed parts of the request is that it had provided the information requested in parts 18 and 21 on 27 August 2020, that the information requested in parts 8, 9, 12, 13, 14 and 16 is exempt under section 12, that the information requested in part 2 is exempt under section 21, that the information requested in parts 5, 6, 7 and 15 is exempt under section 36(2)(c) and that the information requested in parts 10 and 11 is exempt under section 40(2).
6. The Trust had confirmed to the complainant that it considered that the information requested in part 1 is exempt under section 43(1) of FOIA. The Trust subsequently confirmed to the Commissioner that, in addition to section 43(1), it considers section 38(1) of FOIA also applies to part 1.

Reasons for decision

7. This reasoning covers whether the Trust has satisfactorily addressed parts 18 (and 21) of the request and its reliance on the applied exemptions in respect of the remaining 14 parts. The Commissioner has also considered the timeliness of the Trust's response. Its handling of the internal review process is considered under 'Other Matters'.

Section 12 – cost exceeds the appropriate limit

8. The Trust has applied section 12(1) of FOIA to the information requested in parts 8, 9, 12, 13, 14 and 16 of the request. Under this exemption a public authority such as the Trust can refuse to comply with

a request if the cost of complying would exceed the appropriate limit of £450 (18 hours work).

9. Section 12(4)(a) provides that where two or more requests for information are made to a public authority by one person the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
10. The above six parts of the request are for documentation/correspondence on specific matters, responses to any regulator on a particular matter and the number of complaints on a specific matter for the previous two years.
11. In its submission to the Commissioner, the Trust advised that the complainant had subsequently clarified parts 8 and 9 of the request (it provided the Commissioner with a copy of the clarified request) but that its position remains unchanged with regards to those two parts and the remaining four. The Trust noted that, in relation to parts 13 and 14 it may be able to provide the complainant with more information verbally if they take up an offer of a meeting with a senior member of the Trust's Medical Directorate.
12. With regard to parts 8 and 9, the Trust advised the Commissioner that the complainant is seeking correspondence across a wide range of organisations over what they clarified was a five year period. Retrieving that information would involve searching the mailboxes of numerous members of staff in various departments of the Trust.
13. With regard to part 12, the Trust says that retrieving this information would involve various staff members manually reviewing thousands of individual records (of complaints and responses to incidents) across various departments of the Trust. The Trust estimated that that process would take 36 hours.
14. With regard to parts 13 and 14, the Trust says that this information is contained within logs that contain a significant amount of complex and technical information. It considers that this information would need significant explanation and adaptation to render it comprehensible to a lay reader.
15. Finally, with regard to part 16, the Trust says that retrieving this information would again involve various staff members manually reviewing thousands of individual records (of complaints and responses to incidents) across various departments in the Trust. The Trust estimated that that process would take 200 hours.
16. The Trust has provided estimates of how long it would take to comply with some of the parts to which it has applied section 12 but has not provided the detail to support that estimated – for example the 200

hours it has estimated for part 16 of the request. That said, the Commissioner will accept that complying with these six parts of the request would need the input of a number of staff and would need thousands of records to be manually reviewed. The Trust also noted that the complainant had subsequently clarified that parts 8 and 9 should cover a period of five years.

17. Part 16 of the request covers two years and is for the number of complaints the Trust received about ambulances failing to attend for urgent transfers. The Commissioner has considered the Trust's reasoning at paragraph 15. It may well be the case that it would take the Trust 200 hours to comply with this part but even it took the Trust a quarter of that time it would still take 50 hours and exceed the section 12 cost limit. Especially when combined with the cost of complying with part 12, which is for particular communications associated with those complaints. The Commissioner notes that to provide the number of specific complaints and associated communications requested the Trust would have to manually review all the complaints it received and correspondence associated with those complaints. He will therefore accept that section 12(1) is engaged in respect of parts 12 and 16 of the request. Therefore, in line with section 12(4)(a), he finds that the Trust is not obliged to comply with those parts or the remaining four parts to which it has applied section 12(1).

Section 21 – information accessible to the applicant by other means

18. The Trust has applied section 21 of FOIA to part 2 of the request, which is for service level agreements/policies associated with categorising and prioritising responses, and response times. The Trust had provided the complainant to a link to its website where 999 target response times and performance figures are published. Of relevance to this investigation, in their request for a review, the complainant noted that the link provided did not include the requested service level agreements.
19. Under section 21 of FOIA information is exempt from disclosure if it is already reasonably accessible to the applicant.
20. In its submission to the Commissioner, the Trust acknowledged that it had not provided the complainant with a direct link to other information on its website, about its performance. The Trust went on to tell the Commissioner that it had provided a further response to the complainant in September 2022 as part of wider correspondence with them. The Commissioner assumes that correspondence included the additional link that the Trust provided to him; if not, the Trust should provide that link to the complainant.
21. The Commissioner finds that, although it mishandled this part of the request because it did not provide a link to all the relevant published

information, the Trust was entitled to apply section 21 of FOIA to the relevant information it has withheld.

Section 36 – effective conduct of public affairs

22. The Trust has applied section 36(2)(c) of FOIA to parts 5, 6, 7 and 15 of the request. These are for call handler and patient training material/guidance and protocols for transferring patients between sites.
23. In its submission to the Commissioner the Trust has noted, however, that, with regard to part 6, it does not instruct call handlers to advise patients on which hospital they should attend. With regard to part 15, the Trust has noted in its submission that transfers between hospital sites are done via the [Inter-Facility Transfer](#) process, which is triggered via the hospitals.
24. Section 36(2)(c) says that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would or would be likely to otherwise prejudice the effective conduct of public affairs.
25. In its response to the request the Trust said that the information sought in these parts is contained within internal procedural documents that it holds. These documents are kept under regular review as operational demands change eg managing the COVID-19 pandemic and increased winter demand. The Trust said it considered that disclosing this information into the public domain would be likely to prejudice the effective conduct of public affairs as it would impede that flexibility. It could also cause a loss of confidence in Trust services which may adversely affect the public's willingness to use those services.
26. Were one version to be disclosed, the Trust said, every subsequent version would also have to be disclosed in order to ensure that the public always had access to the most current information. The Trust considered that this would be onerous and could cause confusion. It said that the information it had provided in response to the requests and information that it publishes about matters such as its 999 response times, is sufficient to meet the public interest in understanding how the Trust responds to 999 calls that relate to reports of suspected stroke.
27. The complainant disputed the Trust's points in their request for a review. They said that the Trust appeared to be advising that it had applied this exemption as it considered the process of updating its material would be onerous. The complainant also asked for more information about the qualified person.
28. In its initial submission to the Commissioner, the Trust confirmed its opinion that the information already published about its performance standards, response times and categorisation of calls is sufficient to meet the public interest and that any further detail is exempt under

section 36(2)(c). The Trust also said that it regularly posts on social media and in media articles about its level of activity and increases this when demand is exceptionally high. During periods of exceptional demand, it gives patients who call 999 an estimated time of arrival. However, in most cases it arrives sooner. The Trust says it gives this information during the 999 call so that the patient or caller can make an informed decision as to whether or not they want or are able to make their own way to hospital.

29. The Commissioner asked the Trust for more information about its Qualified Person (QP).
30. The Trust confirmed that the QP was Salman Desai, now the Trust's Deputy Chief Executive and Acting Deputy Chief Executive at the time of the request. The Commissioner is satisfied that, under sub-section 36(5)(o) of FOIA, Salman Desai was the appropriate QP.
31. The Trust has provided the Commissioner with its email correspondence with the QP, seeking his opinion with regard to its proposed approach to the complainant's request. On 7 January 2022 the Trust sent the QP a copy of its substantive response and a copy of its proposed internal review of its late response (discussed under 'Other Matters'). In an email dated 11 January 2022 the QP indicated they were overall content with the proposed internal review approach. The Commissioner will assume that the QP had also reviewed the substantive response which had by that point been sent to the complainant. In effect therefore, the QP confirmed that they were content with the Trust's application of section 36(2)(c). The Commissioner is therefore satisfied that an opinion about section 36(2)(c) was given by the QP. He has gone on to consider the timing of the opinion.
32. The request was submitted on 12 July 2021. The QP's opinion is dated 11 January 2022. The Trust provided its initial response to the request on 24 December 2021, which is before the date of the QP's opinion. However, the internal review was provided on 14 January 2022, by which time the QP's opinion had been sought. Since the opinion was obtained before the Trust gave its final position in its substantive review, the Commissioner will accept that the opinion was given at an appropriate time.
33. The Commissioner expects a public authority to have obtained the QP's opinion before it provides its initial response to the request. That did not happen in this case. The Trust has acknowledged to the Commissioner that there were shortcomings in its handling of the section 36 exemption and has explained how it will manage this exemption in the future.
34. The Commissioner has gone on to consider whether the QP's opinion in this case is reasonable. He has noted that the complainant does not

consider that the reasoning the Trust put forward to justify its reliance on section 36 to be reasonable. However, in the context of section 36 of FOIA, 'reasonableness' is not determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it is a reasonable opinion, and not necessarily the most reasonable opinion. The test of reasonableness is not meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, he must find that the exemption is engaged.

35. It is not clear from the Trust's internal review response whether it considers that the envisioned prejudice would or would be likely to occur if the information were disclosed. Without any evidence to support a position that the envisioned prejudice **would** occur, the Commissioner will interpret the Trust's position as being that it considers prejudice would be likely to occur.
36. As such, the QP's opinion is that disclosing the internal procedural documents in question would be likely to impede the Trust's flexibility and decrease public confidence in its service. This is because the Trust reviews those documents regularly and if it disclosed them as they were at one point in time, it would have to disclose them every time they were updated, so that the public always had access to the most up to date versions. The Trust considers there is a risk of confusing the public through out of date versions of the documents being in the public domain and, presumably, not always in the Trust's control.
37. Having viewed the Trust's correspondence with the QP the Commissioner is satisfied that the QP had enough information about the request, the background to the request and the information to which the Trust applied section 36 to form an opinion as to whether that exemption was engaged. The Commissioner therefore accepts that the QP's opinion on the likely effects of disclosing the withheld information is one a reasonable person might hold. The Trust was therefore entitled to apply section 36(2)(c) of FOIA to parts of the request and the Commissioner will go on to consider the associated public interest.
38. In their request for an internal review, the complainant was critical of the arguments for withholding the information that the Trust had provided but did not put forward any arguments for its disclosure. They did not provide any such arguments in their complaint to him. There is, however, a general public interest in public authorities being open and transparent.
39. In its response to the request, the Trust said that the information that it had released in response to the complainant's requests and the information that it publishes about matters such as its 999 response

times, is sufficient to meet the public interest in understanding how the Trust responds to 999 calls about suspected stroke.

40. In the absence of any compelling public interest arguments for the information's disclosure the Commissioner is satisfied that there is greater public interest in withholding the information requested in parts 5, 6, 7 and 15 of the request. As the Trust has noted, the general public interest in transparency about the Trust's performance is met through the information it has disclosed and information it proactively publishes. There is greater public interest in the Trust retaining control of its training materials, procedures and protocols so that the public is not confused by out of date material and maintains confidence in the Trust. There is also greater public interest in the Trust being able to focus its resources on reviewing and updating its internal training and protocols out of the public gaze. This avoids its resources being diverted by having to release each updated version and by potentially having to handle queries from the public about those materials.

Section 38 – health and safety

41. The Trust has applied section 38(1) of FOIA to part 1 of the request.
42. Under section 38(1) information is exempt information if its disclosure would or would be likely to a) endanger the physical or mental health of any individual or b) endanger the safety of any individual.
43. In its submission to the Commissioner the Trust has said that it does not consider that it would be in the public or the wider NHS's interests for patients and members of the general public to potentially be aware of the highly complex, technical algorithms associated with the description and answers they provide when calling 999 for life threatening emergency health conditions and incidents and/or their associated ambulance service responses.
44. The Trust explained that a patient who raises a concern or a complaint about their care will be told what category of prioritisation their 999-call generated eg category 1, 2, 3 and 4. They will be given information on applicable national performance standards and how the service performed in their case against those standards. Individuals will not be told how the prioritisation system reached that triage output.
45. The Trust considers that section 38(1) is engaged on the basis that if information was known, patients may give inaccurate information in order to be given a higher priority response. This could result in inappropriate medical advice being provided and/or the inappropriate deployment of emergency medical services. This can mean that the caller would not receive care which is best suited to their circumstances, which could result in harm to them. It could also mean that if resources have been wrongly deployed to a patient who has manipulated their

responses, other patients are being put at risk of harm by not receiving the right level of care and response they require. For these reasons the Trust considers it is essential to take steps to ensure that information remains withheld.

46. The Trust has gone on to say that there is already evidence of patients with some knowledge of the triage system due to repeat calling, trying to manipulate their response. For example, a patient may say they are bleeding profusely so are given a high priority but on arrival the Trust discovers the patient has sustained a small cut to their finger. Or a patient may say they are suffering a heart attack and cannot breathe when in fact they have a bad cough that has gone on for a while.
47. The Trust says it has a well-established Frequent Callers Team to manage patients who call the service on a regular basis, often with exaggerated conditions. Where possible the Team helps them find more appropriate routes to care. Frequent callers call the emergency service for a vast range of conditions, both physical and mental. Every call that is made that is exaggerated causes potential harm to other patients in the community who may not be able to get through to the service or be put in a queue and are therefore delayed in receiving urgent and or emergency care.
48. The following data the Trust provided to the Commissioner relates to patients currently on its frequent caller lists who have all called 999 in the last six months. Out of 52 patients 26 (50%) were found to have a different clinical outcome/response when clinicians assessed them, to the one they were allocated based on the information they provided when making their call.
 - Greater Manchester, 20 callers, 8 were found to have a different outcome
 - Cumbria and Lancashire, 16 callers, 8 were found to have a different outcome
 - Cheshire and Merseyside, 16 callers, 11 were found to have a different outcome
49. According to the Trust, NHS Digital who owns the copyright to NHS Pathways also considers that releasing this information to the public via the FOIA route would be likely to endanger the physical health and the safety of individuals by providing information which could be used to 'shortcut' the system. As stated above, this would mean that the caller would not receive care which is best suited to their circumstances, which could result in harm to them. It could also cause harm to other patients for whom a response and/or emergency ambulance response may not be available.

50. The Trust directed to a [FOIA request for NHS Pathways information](#) that NHS Digital had refused under section 38.
51. Based on the Trust's submission and the context of the withheld information, the Commissioner is satisfied that there is a causal link between disclosing the information and endangerment to individuals' health and safety, for the reasons the Trust has given. Furthermore, the Commissioner is satisfied that the likelihood of this occurring is one that is more than hypothetical. The Commissioner has decided that the Trust is entitled to withhold the disputed information under section 38(1) of FOIA as disclosure would be likely to endanger individuals' health or safety. He has gone on to consider the associated public interest test.
52. The Commissioner has found that disclosing the requested information would be likely to endanger individuals' health or safety. The public interest in disclosure would have to be extraordinarily great to justify endangering anyone's health or safety. The complainant did put forward wider public interest arguments for the information's disclosure when they disputed the Trust's application of section 43 to this information. The Commissioner is satisfied that the high public interest threshold for disclosure is not met in this case. The public interest in the Trust's handling of 999 calls is met to a satisfactory degree through the related information that the Trust proactively publishes and which is made available to patients as appropriate.
53. Because the Commissioner has found that the information requested in part 1 is exempt under section 38(1) of FOIA, it has not been necessary to consider the Trust's application of section 43(1) to this part.

Section 40 – personal data

54. The Trust has relied on section 40(2) of FOIA to withhold the information requested in parts 10 and 11 of the request which is for copies of upheld complaints about particular matters.
55. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles.
56. In this case, if the requested information can be categorised as personal data it would be special category personal data as it concerns people's health. Special category personal data is particularly sensitive and therefore warrants special protection.
57. In its submission to the Commissioner, the Trust has said that providing copies of complaint files would inevitably involve the disclosure of significant amounts of personal data of affected service users, their families and others. It considers that that disclosure would be unfair and unlawful and as such would breach the first data protection principle.

The Trust also says that redacting that information would render the complaint files incomprehensible and would not in any event enable complete anonymisation of the information.

58. In their request for an internal review, the complainant said that they had not requested complaint files but copies upheld complaints. They considered these two parts to be extremely limited requests. The complainant could not see how redacting names from such documents could possibly make them incomprehensible as "it is a standard process used in many areas in an entirely satisfactory manner."
59. The complainant also said that, in addition, regulatory, Ombuds[man] and decisions of the coroner often do not contain any personal data of service users anyway, which would make redaction unnecessary in any event.
60. The Commissioner has first considered whether the requested information – upheld complaint files – can be categorised as personal data. He considers that even if names were redacted, the remaining information in a complaint file – dates, times, circumstances generating the complaint – would still contain a lot of detail. The Commissioner is satisfied that the level of detail remaining would still enable someone who is sufficiently motivated and who already has some knowledge about the situation such as a neighbour, family member or indeed member of the Trust, to identify the individual who had submitted the complaint. As the Trust has noted, if all the detail were redacted, there would be no meaningful information to disclose.
61. The Commissioner's decision is that complaints submitted to the Trust can be categorised as personal data and, furthermore, can be categorised as sensitive personal data.
62. As noted, special category data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 of the UK General Data Protection Regulation can be met.
63. The Commissioner considers that the only conditions that could be relevant to a disclosure under FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
64. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to FOIA request or that they have deliberately made this data public.

65. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of FOIA.

Procedural matters

Section 1 – general right of access to information public authorities hold

66. Section 1(1) of FOIA obliges a public authority to confirm whether it holds requested information and to communicate it if it is held and is not exempt information.
67. In part 18 of the request, the complainant has requested the number of unallocated Category One and Two calls at specific times on 19 and 20 June 2021. In part 21, the complainant asked the Trust to confirm that, in relation to part 18, the figures it had [previously] provided for three times on 20 June 2021 were correct.
68. The Trust confirmed it had provided this information on 27 August 2020. In their request for an internal review, the complainant acknowledged the information had been provided but disputed that it had been accurate information. In its final internal review response of 2 March 2022 the Trust confirmed that its position remained unchanged.
69. FOIA does not concern whether or not information a public authority holds is accurate; it is not the Commissioner's role to check information's accuracy. The complainant does not dispute that the Trust provided a response to a previous request for the same information as that requested in part 18. As such, the Commissioner finds that there is no breach of section 1(1) of FOIA in respect of part 18 and, to the degree that it can be considered to be a valid request for recorded information, in respect of part 21.

Section 10 / section 17 - timeliness

70. Under section 10(1) of FOIA, a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request. Under section 17(1) a public authority must issue a refusal notice in respect of any exempt information within the same timescale.
71. In this case, the complainant submitted their request on 12 July 2021. The Trust did not comply with section 1(1) or issue a refusal notice until 24 December 2021 (or possibly until September 2022 with regards to part 2 of the request). This was a clear breach of sections 10(1) and 17(1) and an unacceptably long delay.

Section 16 – advice and assistance

72. Section 16(1) of FOIA places an obligation on a public authority to offer an applicant advice and assistance if it is reasonable to do so. In relation to section 12(1), this might be suggesting how they might refine their request to bring complying with it within the cost limit.
73. The Trust has applied section 12 to six parts of the request, the information requested in these parts is disparate, and the way the Trust holds records and how the Trust would need to search those records and prepare information is not straightforward. As such, the Commissioner finds that the Trust could not reasonably have been expected to offer advice and assistance on how the complainant could refine these wide-ranging parts of the request to the point where complying with them would fall within the cost limit. In addition, the Trust could have relied on section 12 to refuse all 21 parts of the request but chose not to do so. It has also offered to meet the complainant to discuss an aspect of their request. On balance therefore, the Commissioner finds that there was no breach of section 16(1).

Other matters

74. Provision of an internal review is not a requirement of FOIA but is a matter of good practice. The Commissioner expects a public authority to provide an internal review within 20 working days of a request for one, and in the most complex cases only, within a maximum of 40 working days.
75. In this case, the complainant submitted what they categorised as a complaint to the Trust on 25 November 2021 when they had not received a response to their request. The Trust handled this as a request for an internal review (of its non-response) and provided a review outcome on 14 January 2022. By this time it had provided the complainant with a substantive response to their request (on 24 December 2021).
76. The complainant requested an internal review of the Trust's substantive response on 2 February 2022. In correspondence to them dated 2 March 2022, the Trust confirmed that "...the position remains unchanged" ie it in effect provided a substantive internal review.
77. The Commissioner generally advises against a public authority carrying out a formal internal review of the timeliness of its response. He considers that it is a more efficient use of its resources to include an acknowledgement and explanation of the delay in its substantive response when it provides this. If there is a delay the authority should, of course, keep the applicant updated on when they can expect a response, in line with the section 16 duty to offer advice and assistance.

78. In this case, the Trust provided an internal review of its late response within an acceptable timeframe (given the complexity of the request), and provided an internal review of its substantive response, again within an acceptable timeframe. As such, the Commissioner has no concerns about the Trust's handling of the internal review process.

Right of appeal

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

80. 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.

81. 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

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