



East London

**NHS Foundation Trust
Information Governance**

Robert Dolan House
9 Alie Street
London
E1 8DE

Email elft.foi@nhs.net

Website: <https://www.elft.nhs.uk>

11th October 2024

Our reference: FOI DA5482R

I am responding to your request for an internal review under the Freedom of Information Act 2000 which was received on 11th September 2024. This was regarding our response on 23rd August 2024. I am sorry for the delay in responding to your request.

I am now enclosing a response which is attached to the end of this letter. Please do not hesitate to contact me on the contact details above if you have any further queries.

If you are dissatisfied with the Trust's response to your FOIA request then you should contact us and we will arrange for an internal review of this decision.

If you remain dissatisfied with the decision following our response to your complaint, you may write to the Information Commissioner for a decision under Section 50 of the Freedom of Information Act 2000. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113
Web: www.ico.org.uk

Please note that the data supplied is not allowed to be re-used and/or published without the explicit consent of East London NHS Foundation Trust. Please contact the signatory to request permission if this is your intention



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Request:

Question 1: 1. Challenge to Application of Section 40 (Personal Information)

The Trust has cited Section 40(2) of the FOIA, which covers the personal data of third parties where compliance with the request could potentially breach the Data Protection Act 2018 or UK GDPR. While I fully support the protection of personal data, I believe that in this instance, the data requested does not inherently identify individuals.

The information I have requested, specifically regarding legal fees (solicitors' and barristers' fees, external investigator fees, settlement amounts), pertains primarily to the use of public funds. Legal fees, settlement agreements, and other costs linked to Employment Tribunal cases are professional costs paid to external service providers and do not directly reveal personal data about the individuals involved.

ICO Guidance on Section 40: According to ICO guidance, financial data related to legal fees does not qualify as personal data unless combined with other specific identifiers. In this instance, I have not requested information that could directly identify personal details about individuals, and the disclosure of the requested financial data would not automatically infringe on anyone's privacy rights.

2. Public Interest in Transparency and Accountability

The expenditure of public funds by NHS Trusts on legal matters is a matter of substantial public interest. There is a legitimate public interest in understanding how public money is spent, particularly in cases involving Employment Tribunals. The disclosure of this financial information ensures transparency and accountability for public sector organizations, which are expected to handle their funds responsibly.

Corporate Officer of the House of Commons v Information Commissioner [2008] further supports the argument that public bodies, especially when dealing with public funds, should expect a higher level of scrutiny regarding their financial conduct. The public has a right to know how taxpayer money is being spent, particularly in legal cases where public funds are used for professional fees and settlements.

3. Compromise Proposal: Anonymized or Aggregated Data, and a refined list of questions.

To address any concerns about potential identification, I would like to propose a compromise:

Please simply respond to Q1 a, Q1b, Q2a and Q2b. You can also combine all figures for the legal fees across all relevant cases. Aggregating these figures will mitigate any privacy risks while still ensuring that the public is informed about how public funds are used.

4. Challenge to Application of Section 12 (Cost Limit) The Trust has also cited Section 12, stating that the information is not stored in a retrievable manner and that providing it would exceed the cost limit of 18 hours. While I appreciate the need to manage resources efficiently, I would like to challenge this application based on similar requests submitted to other NHS Trusts.

In many cases, Trusts have been able to retrieve legal fee data and provide total figures for solicitors and barristers, either separately or



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combined. It is reasonable to expect that legal and financial records related to Employment Tribunal cases would be stored in a manner that allows for retrieval, particularly as these records are subject to auditing and accountability requirements.

5. Record Retention Requirements I am also concerned about the suggestion that certain records might not be available due to the period requested. According to HMRC guidelines, organizations are required to retain records for at least six years from the end of the last company financial year they relate to, or longer in certain circumstances (e.g., where transactions cover more than one accounting period).

Given that the cases I have requested data for fall within the six-year timeframe, I believe that the legal and financial records relating to these cases should still be accessible. These records, particularly legal invoices and expenditure on solicitors and barristers, are essential for financial accountability and should be available for the requested period.

6. While I understand that compiling detailed case-by-case data might require effort, I believe that it should be reasonable for the Trust to extract the requested information from existing records. Financial and legal expenditure is generally tracked for auditing purposes, and retrieving total expenditure on solicitors and barristers should not involve excessive complexity. If the Trust is unable to provide specific details for each case, I am happy to accept aggregated totals for the legal fees across all cases mentioned in my request.

The ICO's Decision Notice FS50070854 outlines that public authorities should be able to extract data from "building blocks" of information they already hold. In this case, the Trust should have access to legal and financial records that can be used to compile the requested information without creating new data.

In summary, I kindly request that the Trust reconsider its decision to withhold the requested information under Sections 40 and 12 of the FOIA. There are clear public interest arguments for the disclosure of this data, and aggregated or anonymized data should provide a suitable compromise to address any privacy concerns. Additionally, I would appreciate further clarification on the specific efforts required to retrieve the information and any possible ways to refine the request to bring it within the cost limit.

Answer: The Trust has reviewed its previous response and upholds its decision not to disclose this information.

The Section 12 exemption has not been applied to any part of the request, so we cannot review the application of this exemption, nor can we suggest ways for the request to be refined to within a cost limit as a result. The aggregated suggested request would therefore unfortunately not be acceptable, as a Section 1 exemption had been applied to the request, not a Section 12. The amalgamating of Q1a, Q1b, Q2i(a) and Q2i(b), and responding solely to this, would not assist as the information requested is either not held in a retrievable manner or is not recorded.

For Q1a-h, including Q1a and Q1b, it is not possible to provide you with the information, as an accurate amount is not recorded in a retrievable manner for each individual case. The data is not recorded in a way that would enable a breakdown to the necessary levels for this request. Therefore a Section 1 exemption was applied and is upheld.



For Q2, including Q2i(a) and Q2i(b), the Trust does not record the information requested and is therefore unable to provide a response. The tribunal themselves would identify if a case relates to a Public interest disclosure and Trust summary records of employment tribunals are not able to identify these cases. Therefore a Section 1 exemption was applied and is upheld.

The retention schedule has not been stated as a reasoning behind the application of any exemption.

Section 40 has not been applied to any legal fees as described. It has solely been applied to the salary which would likely be paid to the claimant. As it will relate to less than five individuals and will likely reveal an individual's specific salary, it has been determined that the application of section 40 is upheld.



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Question 1: Please give me the total trust spend for each of the following ET claims:

- Mr E Bantar v East London NHS Foundation Trust: 3202191/2018
- Mr M Hasan v East London NHS Foundation Trust: 3304258/2023
- Ms A R Yamjom v East London NHS Foundation Trust: 3307821/2020
- Ms H Roberts v East London NHS Foundation Trust: 3200189/2018

For each case, please break the spending down into the following categories:

- a. Solicitors' fees* (if applicable)
- b. Barristers' fees* (if applicable)
- c. External mediator fees (if applicable)
- d. External investigator fees** (if applicable)
- e. Salary paid to the claimant while suspended (if applicable)
- f. Salary paid to workers brought in to cover shifts of the suspended claimant (if applicable)
- g. Total paid to claimant as part of settlement agreement (if applicable)
- h. Any other relevant costs

For each case, please also provide the names of the solicitors' firm(s), barrister(s)/chamber(s), mediator/mediation firm(s), and investigator(s) that the costs were paid to.

Clarification: Your request for clarification on "any other relevant costs" appears to fall under the category of unnecessary clarification, as it should be evident that this term is meant to capture any additional expenses that do not neatly fit into the specified categories (a) through (g). These could include administrative costs, travel expenses for legal representatives, or other incidental expenses incurred as part of the tribunal cases.

Answer: Please see Appendix 1 attached.

Question 2: The cases listed in Question One are all taken from the Government Employment Tribunal (ET) website for cases where PIDA (Public Interest Disclosure Act) claims have advanced quite far, usually with several preliminary hearings held. Most cases do not get this far.

Please tell me how many other cases you have in which current or former employees lodged ET1 claim forms alleging a Public Interest Disclosure Act claim between 1 April 2017 and 31 March 2024 that are not included in the list in Question One.

Answer: Please see Appendix 1 attached.



Question 2i: Please give the total trust spend on these additional claims, broken down into the following categories:

- a. Solicitors' fees* (if applicable)**
- b. Barristers' fees* (if applicable)**
- c. External mediator fees (if applicable)**
- d. External investigator fees** (if applicable)**
- e. Salary paid to the claimants while suspended (if applicable)**
- f. Salary paid to workers brought in to cover shifts of the suspended claimants (if applicable)**
- g. Total paid to claimants as part of settlement agreement (if applicable)**
- h. Any other relevant costs**

For a to d, please provide the names of the firms, companies, and/or individuals to whom the costs were paid.

Answer: Please see Appendix 1 attached.



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