

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 January 2018

**Public Authority:** East Kent Hospitals University NHS Foundation Trust

**Address:** Kent and Canterbury Hospital  
Ethelbert Road  
Canterbury  
Kent  
CT1 3NG

### **Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to the East Kent Hospitals University NHS Foundations Trust for information related to the death of his daughter at the William Harvey Hospital. The Trust refused the request under the section 40(2) (personal information) and section 30(1) (investigations) exemptions. During the course of the Commissioner's investigation the Trust said that it was now seeking to rely on section 14(1) in the first instance on the grounds that the request was vexatious.
2. The Commissioner's decision is that the Trust correctly applied section 14(1) to refuse the complainant's request and she requires no steps to be taken.

### **Request and response**

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3. The complainant's request relates to a request for information he made to the Trust on 18 April 2017 where he asked for the Senior Nurse on duty at the William Harvey Hospital on the night of 24/25 June 2010. The Commissioner understands that this is in connection to the death of his daughter at the Hospital. The complainant also asked for a witness statement from the nurse concerned to testify in criminal proceedings against the Trust.

4. The Trust responded to the request on 24 May 2017 when it explained that it was withholding the name of the nurse under the section 40(2) exemption.
5. The complainant subsequently asked the Trust to carry out an internal review and the Trust presented its findings on 12 July 2017. The review upheld the decision to refuse the request under section 40(2) and also found that the information was additionally exempt under section 30(1)(a)(i) as the information was held for the purposes of an investigation it was required to conduct.

### **Scope of the case**

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6. On 17 July 2017 the complainant contacted the Commissioner to complain about the Trust's refusal of his request.
7. During the course of the Commissioner's investigation the Trust changed its position and said that it no longer wished to rely on the section 30(1) exemption. It maintained that the section 40(2) exemption applied but now said that it believed that the request should have been refused in the first instance under section 14(1) (vexatious requests). On 18 December 2017 the Trust contacted the complainant to explain its new position.
8. The Commissioner considers the scope of her investigation to be to consider whether section 14(1) can be applied to the request. Only if she finds that section 14(1) does not apply will she also go on to consider whether section 40(2) might apply in the alternative.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

9. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The term 'vexatious' is not defined in the FOIA. The Upper-tier Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner vs Mr Alan Dransfield (Dransfield)* and concluded that the

term could be defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”.<sup>1</sup>

11. The *Dransfield* case identified four factors that may be present in vexatious requests:
  - the burden imposed by the request (on the public authority and its staff )
  - the motive of the requester
  - harassment or distress caused to staff
  - the value or serious purpose of the request.
  
12. The Commissioner has also identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests.<sup>2</sup> In short they include:
  - abusive or aggressive language
  - burden on the authority
  - personal grudges
  - unreasonable persistence
  - unfounded accusations
  - intransigence
  - frequent or overlapping requests; and
  - deliberate intention to cause annoyance.
  
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
  
14. The Commissioner’s guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
  
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be ‘vexatious’ depending on the circumstances of that request.

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<sup>1</sup> Information Commissioner and Devon County Council vs Mr Alan Dransfield [GIA/3037/2011], para. 27.

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

16. In this case the Trust has argued that the request, in its view, is an attempt "to re-open or maintain a campaign to maliciously impugn trust employees, and others, about circumstances that have already been thoroughly scrutinised by various official bodies including a coroner and the Chancery Division of the High Court, in the Royal Courts of Justice".
17. By way of providing some background information, the Trust explained that the request related to the death of the complainant's daughter at one of the Trust's hospitals in 2010. The complainant disputed the official cause of death and since then the Trust said that he had pursued a campaign to find evidence to support that belief. It added that the complainant had written threatening and what it said were possibly libellous letters to and about its staff and others with connection to his daughter's death and subsequent linked events. It explained that the letters invariably claim that his daughter's death involved gross negligence manslaughter by clinicians and this was concealed by the use of forgery plus perjury and involves a conspiracy by the Trust and others. This is also apparent from the complainant's letters to the Commissioner and other correspondence that has been made available to her.
18. The Trust went on to explain that letters maintaining that criminal charges will be brought against them have been sent by the complainant to anyone who has had dealings with the death, such as the doctors in the case, the two pathologists (who carried out separate post mortem examinations), the Trust's Legal Services Manager and the Coroner herself. The Trust informed the Commissioner that the complainant had refused for five years to register his daughter's death or to arrange a funeral despite the Coroner declining to hold an inquest. This led to the Trust making an application to the High Court for a declaration to register the death and arrange for a burial or cremation. At this point the complainant became involved in the court hearings where he sought to have his daughter's body retained as evidence of a conspiracy to conceal the alleged offence of gross negligence manslaughter. The judge in that case, the Honourable Mr Justice Hildyard, found in the Trust's favour and found the complainant liable for the Trust's costs. The Trust also said that during the hearing the complainant had become verbally aggressive and intimidating to its barrister and its Legal Services Manager. As a result the Trust reported the complainant to Kent Police for harassment although the Commissioner understands that no further action has been taken by the Police.
19. In explaining the lengths the complainant had gone to in pursuance of his campaign the Trust said that he had accused its "four consecutive Chief Executives and a Chair, the Parliamentary and Health Service

Ombudsman, the Secretary of State for Health, the Chairman of the Care Quality Commission, Mr Justice Hildyard, the Treasury Solicitor, the Cabinet Secretary, the Commissioner of the Metropolitan Police, the Chief Constable of Kent Police, the Attorney General and others" to be complicit in the conspiracy to conceal his daughter's death. It explained that the complainant has pursued every avenue open to him to complain and have various forms of investigation carried out: this includes the coroner, the police, the Parliamentary and Health Ombudsman, the Civil Court System and the Care Quality Commission.

20. Finally, the Trust said that in refusing the request it was concerned about the complainant's history of demands of its staff and what it said were the unjust and unfounded allegations that result when its employees do not confirm his point of view. In light of this it said that complying with the request would lead to the nurse concerned suffering the consequences of what it described as the complainant's "outrageous criticisms". It argued that disclosing their identity would expose them to "likely false accusations of conspiracy, insult, abuse and persistent harassment".
21. The Commissioner has considered the Trust's comments, the request itself and the complainant's other correspondence which has been placed before her. She has compared this to the Tribunal's findings in the *Dransfield* case and her own guidance on vexatious requests. This has led her to conclude that the request can be fairly characterised as vexatious and section 14(1) has been correctly applied.
22. In the Commissioner's view the complainant's request has all the characteristics of a vexatious request as discussed in *Dransfield*. The request is clearly an attempt by the complainant to pursue his campaign against the Trust and members of its staff in relation to an issue that has been investigated by several different bodies, including the courts. All have found the complainant's allegations to be unfounded. In effect the request is an attempt to reopen this matter. Indeed, in making this request the complainant made a number of very serious allegations against members of the Trust and explained his intention to pursue criminal proceedings. Since making his request the complainant has contacted the Trust again on several occasions, repeating his allegations and again threatening legal action. In doing so the complainant confirmed that he wanted the name of the nurse so that she could provide a witness statement which he could present to the court as part of the legal proceedings he said he had commenced. He said that the testimony of this nurse would expose what he described as the "heinous criminal conduct" of the Trust. In the Commissioner's view the complainant's actions are an attempt to pursue his legal action by other means, i.e. via FOIA and it amounts to an abuse of this process.

23. The history of the request and the complainant's repeated allegations to anyone involved in the case is also likely to be distressing to staff or have the effect of causing them harassment. When seen in the wider context of the complaints made to various bodies and extensive correspondence with the Trust it is also likely that the request would have the effect of placing an unjustified burden on the Trust which would serve to distract it from its core functions.
24. As regards any serious purpose or value of the request, the Commissioner again finds that when the history behind the request is taken into account there is very little value to the request. As the Commissioner has already explained, the complainant's allegations have been considered by the courts and various other bodies. It seems extremely unlikely that his request would resolve this matter. Rather, it is far more likely that disclosure will in fact lead to further requests and correspondence from the complainant thereby compounding the burden placed on the Trust and the distress caused to its staff.
25. In reaching her decision the Commissioner has also taken into account the fact that the request, when seen in the wider context of the complainant's campaign against the Trust, displays several of the indicators of a vexatious request mentioned above. The request includes unfounded allegations, demonstrates unreasonable persistence and is disproportionate or unjustified. The Commissioner is also mindful that the request and other correspondence from the complainant has a somewhat menacing tone.
26. All of this leads the Commissioner to conclude that the impact of the request on the Trust is disproportionate and unjustified by any serious purpose or value. The Commissioner is satisfied that the request is vexatious and section 14(1) has been correctly applied.

## Right of appeal

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27. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Paul Warbrick  
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