Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2018

Public Authority: University Hospitals Plymouth NHS Trust
Address: Level 7, Derriford Hospital,
Plymouth,
Devon PL6 8DH

Decision (including any steps ordered)

1. The complainant has requested information relating to a number of University Hospitals Plymouth NHS Trust (previously known as Plymouth Hospitals NHS Trust) (the Trust) reports from 2017.

2. The Commissioner's decision is that the Trust is entitled to rely section 14(1) of the FOIA in response to parts 2 – 5 of the request.

3. However, the Commissioner also finds that as the Trust had agreed to disclose the information requested at part 2 it breached section 10 (time for compliance) of the FOIA by not providing the information requested at part 2, within 20 working days.

4. As the information at part 2 of the request has now been provided the Commissioner does not require the public authority to take any steps.

Request and response

5. On 9 November 2017, the complainant wrote to the Trust and requested information in the following terms:

"Please may a make a Freedom of Information request as follows:

Preferred format: Emailed documentation

Description of Information

1. PHNT Patient Experience Reports monitored by the Patient Experience Committee and Trust Board for the year 2017

2. *PHNT Patient Experience Reports monitored by the Safety and Quality Committee for the year 2017*

3. *PHNT Quality Governance Learning Group Reports for the year 2017*

4. *PHNT Nursing & Midwifery Operations Reports for the year 2017*

5. *PHNT Care Group Governance Committee Reports for the year 2017*

6. The Trust responded on 5 December 2017 and provided some information within the scope of the request in relation to part 1, in the form of a link to Trust Board papers. However, it refused to provide the remainder and cited sections 21(1), 40(2) and 41(1) of the FOIA as its basis for doing so.

7. Following an internal review the Trust wrote to the complainant on 30 January 2018. It maintained that part 1 of the request had been answered. It revised its position with regard to part 2 of the request and advised this information would be disclosed. However, it maintained that the remaining information was exempt from disclosure under section 41.

Scope of the case

8. The complainant contacted the Commissioner on 12 March 2018 to complain about the way the request for information had been handled.

9. The Commissioner wrote to the Trust for its submissions to support its application of section 41. Having received its initial response it was the Commissioner's view that it did not appropriately address the points she had raised. She therefore contacted them again to outline the particular issues that needed addressing.

10. On 31 October 2018, the Trust provided its further response. It maintained that section 41 applied to the withheld information. However, it also claimed late reliance on section 14(1).

11. The Commissioner invited the Trust to provide any further arguments in support of this, and to advise the complainant of the change in its position. On 26 November 2018 the Trust wrote to the complainant advising that in addition to the previous exemptions cited, it was also relying on section 14(1) due to the burden it would create to redact the information.

12. The Commissioner will therefore consider the application of section 14 first. In the event that she finds this does not apply she will go on to consider section 41.

Reasons for decision

Section 10 – time for compliance

13. The complainant advised the Commissioner that the information requested at part 2 (Safety and Quality Committee papers) of her request was not provided until 16 May 2018. The internal review carried out on 30 January 2018 had concluded that this information should have been disclosed.

14. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

15. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt*."

16. The Trust recognised that the current team have not been able to maintain the appropriate compliance rate as a result of a significant increase in the volume and complexity of FOI requests. This has been reported to the Trust Board and further resource, resilience and training is being put in place.

17. In this particular case, the Trust recognised that it did not act in a timely manner on the recommendation of the internal review that information requested under Item 2 should be disclosed. On receiving correspondence from the advocate on 16 May 2018 a review of the internal review letter by the FOI team picked up that the information needed to be disclosed. This happened on the same day.

18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to provide the information requested at part 2 of the request within 20 working days, the Trust has breached section 10 of the FOIA.

Section 14 – vexatious and repeat requests

19. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

20. 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 and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined *as "manifestly unjustified, inappropriate or improper use of a formal procedure"*.

21. 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.

22. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

    "…importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

23. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

24. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance[1] and, in short, they include:

    - Abusive or aggressive language
    - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
    - Personal grudges

[1] https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf

- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

25. 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.

26. The Commissioner's guidance goes on to suggest 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.

27. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

28. As noted at the beginning of this decision notice, after internal review, the Trust agreed to disclose the information requested at part 2. However, following the Commissioner's correspondence the Trust now considered that this request was vexatious under section 14(1). This is based on the following reasons;

    - The withheld reports are numerous and the task of redacting personal information in preparation for disclosure would place a significant burden on the Trust. Managers and clinicians would be taken away from their main duties to consider the content of the reports and the possibility of each piece of information being combined with other information to make it identifiable.

    - Each meeting's reports are treated as a package and it is acknowledged that there are individual reports within each meeting that may be disclosable but the task of sifting through each set of reports would be too burdensome.

    - A summary of all of the reports are written in Trust Board papers which are publically available.

    - The Trust has a duty to provide information to other applicants and receives 700 FOI requests a year. It is working hard to increase its compliance to an acceptable level and to improve

proactive publication. It is therefore important to draw a line under this FOI request which has taken a disproportionate amount of time.

29. The Trust stated it is totally committed to maintaining the highest standards of openness and transparency and, as such, publishes extensive information about all aspects of its activities on its website. This includes detailed papers considered by our Trust Board.

30. With regard to the withheld information this is the most highly sensitive and confidential information from the organisation relating to the delivery of its clinical services and the matters arising thereof. The nature of the content of the meetings requested constitutes part of a whole and each item should not and cannot be considered in isolation.

31. Furthermore, the Trust believes that disclosure of any further information will cause a disproportionate or unjustified level of disruption, irritation or distress. The Trust could not, without allocating significant clinical and governance expert resources be assured of the efficacy of further disclosures.

32. The Trust explained that it treats FOI requests as applicant and motive blind. The FOI team do not reveal the name of requestors to staff from whom they are gathering information for the reply. Therefore, although the FOI team could ascertain from this particular FOI request that the applicant was a patient of the Trust and had interacted with other departments, the nature and extent of the dealings with those departments was not known and the FOI team treated the request in good faith. In this case, although FOI requests are treated as applicant and motive blind, the wider context of the amount of time spent answering this particular applicant's other requests cannot be ignored. This includes other FOI requests and time spent by a variety of Trust managers and clinicians to provide information to the applicant through other routes. The applicant appears to be persisting with requesting more information in relation to issues that have already been addressed by the Trust.

33. Having consulted the Commissioner guidance the Trust considered that, in the case, its previous dealings with the complainant should be taken into account. It provided a summary of some of these interactions in order to illustrate.

34. Clearly the Commissioner will not disclose details of these, suffice to say that the Trust has dealt with a number of complaints and requests from the complainant, four of which have previously been dealt with by the Commissioner. The Trust confirmed each request was dealt with separately however, upon review the commonalities are that the dealings were:

- expansive in scope,
- ongoing communication from the applicant added new concerns and questions making it difficult to finalise an answer and satisfy the applicant;
- communication was only be email and latterly through an advocate; and
- certain issues were raised directly with the ICO

35. On closure by the ICO the issues were taken on to further bodies; i.e. the Information Rights Tribunal and the Parliamentary and Health Service Ombudsman.

36. The Trust provided evidence of the contact and communications it has had with the complainant, in one instance this amounted to approximately 70 emails in the space of four months.

37. The Trust further advised that it had liaised with the departments who have dealt with the complainant's correspondence and that staff felt overwhelmed and harassed by the amount of communication. Other cases had not been dealt with in a timely manner because of the disproportionate amount of time spent dealing with these communications.

38. It is the Trust's view that, despite being given ample opportunity to address her concerns with them, she then took her issues to the corporate department of PALs and Complaints. There were genuine concerns over the Data Protection issues that the Trust addressed and were investigated by the ICO and finally closed with accepted action plans. Finally, the complainant used the FOI process to persist with her concerns. The ICO has provided independent scrutiny of how the Trust has handled the Data Protection and two of the FOI issues. Even so, the complainant has taken the issues on to the other bodies. Consequently, the Trust consider this could be characterised as obsessive or manifestly unreasonable.

39. The Trust explained that it does not judge the purpose or value of requests unless other factors come into play. In this case, given the time spent reviewing the issues, it seems the request is of little benefit to the wider public. The complainant appears to be motivated by highly personal concerns. The disproportionate time spent on matters raised by the complainant has prevented the Trust working on other issues of more relevance to the wider public.

40. In summary, the Trust consider that the request is vexatious in nature as defined by section 14(1) for the following principle reasons:

    - The extensive and continuous correspondence with a number of Trust departments has contributed to an aggregated burden

which has, and continues, to place a significant strain on its resources.

- Despite many attempts to resolve the complainant's requests and concerns, the Trust's experience has been that the complainant remains dissatisfied with any response and will submit numerous further enquiries.
- Requests for information lack any clear purpose and, as such are disproportionate and unjustified.
- Communication from the complainant has caused considerable distress to a number of members of Trust staff. Some staff have felt severely harassed by this.

The Commissioner's view

41. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

42. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

43. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it.

44. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources. The Commissioner accepts that the request has purpose and value to the complainant.

45. The Commissioner has been provided with the unredacted withheld information electronically, which consists of 32 'files' containing various sub-files with the relevant documents. These files contain in excess of 300 documents of varying types such as spreadsheets, word documents, pdf etc and of varying sizes.

46. The Commissioner has reviewed a sample of this information, for example a Quality Governance and Learning Group document

comprising of 59 pages, a Terms of Reference document comprising of 4 pages and an Acute Paediatrics report comprising of 21 pages.

47. Each document would need to be reviewed in order to ascertain if any information fell within the scope of the exemption at section 41 (information provided in confidence) or section 40 (personal data).

48. Having considered all the above, the Commissioner is satisfied that responding to the request would place a disproportionate burden on the Trust, and some staff will clearly be taken away from their main duties of providing healthcare services in order to consider the content of the requested information.

49. Therefore the Commissioner considers that the Trust is entitled to rely on section 14(1).

Other matters

50. The complainant also raised concerns that the Trust provided responses by post even though she had not provided her address.

51. The Trust explained that with regard to the method of communication, the complainant used an email address to make her initial FOI request and this was used to provide its original response. When an internal review is requested it is standard practice in the Trust to, when possible, ask someone other than the person who provided the original response to undertake the review. The person undertaking the review chose to send both a holding letter and substantive response by post.

52. The Trust confirmed that the complainant's health records were not accessed to obtain the address. The Trust has acknowledged that it needs to write a process for handling internal reviews and will include instructions for the reviewer to use the same method of communication with the requestor as the original response.

53. The Commissioner is satisfied that appropriate steps are being taken to ensure this concern has been addressed.

Right of appeal

54. 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

55. 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.

56. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF