

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 November 2012

**Public Authority:** Bristol NHS Primary Care Trust

**Address:** South Plaza  
Marlborough Street  
Bristol  
BS1 3NX

### Decision (including any steps ordered)

---

1. The complainant requested from Bristol NHS Primary Care Trust ("NHS Bristol") information that its Director of Commissioning had received from local NHS Trusts concerning their pathology services. NHS Bristol refused to provide the requested information on the basis that the request was vexatious under section 14.
2. The Commissioner's decision is that NHS Bristol has correctly applied section 14 to the request.

### Request and response

---

3. On 19 November 2011 the complainant made the following request for information under FOIA:

*"On 28th June 2010, Director of Commissioning [person A] wrote to NBT [North Bristol NHS Trust] Medical Director [person B] as follows:*

*"Dear [person B] ,*

*I am writing to request a visit to the Breast Service, including Pathology as part of my induction process in my new role as Co Director of Commissioning for NHS Bristol.....*

*. In addition to the above it would be helpful to have some background data and information that would inform my visit. Items that would be helpful include:*

*o Details of the proposals for Pathology within NBT including the rationale for the proposals as a whole and individual elements*  
*o Accreditation documents for pathology ( I have a summary of the recommendations but not the full report);*  
*o Designation documents for the breast service from the Cancer Network or equivalent;*  
*o Operational policies and protocols for the breast service (or equivalent) for pathology generally and histopathology in particular;*  
*o Operational policies and protocols (or equivalent) for pathology generally and histopathology in particular;*  
*o Audit reports for breast surgery outcomes, benchmarked with other peer services if possible;*  
*o Audit reports for pathology/histopathology, benchmarked with other peer services if possible;*  
*o The Clinic Schedules for the Breast/Pathology services and the clinicians detailed for both the surgical clinic and pathology support for each of these clinics together with confirmation that these slots are present within the individuals job plan. I am happy to see the job plans if that is simpler but your confirmation in writing is sufficient*  
*o Any other documents you think would help me understand the services involved.*  
*(it would be helpful if this information could be circulated to me by email in advance of the visit)"*

*1. Under the Freedom of Information Act, please provide the information that [person A] received from NBT in response to this request.*

*2. Under the Freedom of Information Act, please provide the information that [person A] received from UHBT [University Hospitals Bristol NHS Trust] in response to the same request she doubtless made to that Trust."*

4. NHS Bristol responded on 12 December 2011 and refused to provide the requested information on the basis that the request was vexatious under section 14(1) of FOIA.
5. The complainant requested an internal review on 12 December 2011. NHS Bristol sent the outcome of its internal review on 10 January 2012. It upheld its original position.

## Scope of the case

---

6. The complainant contacted the Commissioner on 23 May 2012 to complain about the way that her request for information had been handled, specifically NHS Bristol's application of section 14 to her request.
7. The Commissioner considered whether NHS Bristol had correctly applied section 14 to the request.

## Reasons for decision

---

8. Section 14(1) of FOIA provides that a public authority is not obliged to deal with a request if the request is vexatious.
9. The Commissioner's approach to determining what constitutes a vexatious request is set out in his guidance on section 14. This outlines a number of factors that may be relevant as to whether a request is vexatious, namely whether:
  - It would create a significant burden in terms of expense and distraction;
  - It is designed to cause disruption or annoyance;
  - It has the effect of harassing the public authority;
  - It can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
  - It clearly does not have any serious purpose or value.
10. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Information Tribunal upheld this approach in *Rigby v Information Commissioner and Blackpool, Fylde and Wyre Forest Hospitals NHS Trust (EA/2009/0103)*, commenting that:

*"it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context."*  
(para 40)

11. The Commissioner recognises, however, that it is the request, and not the requester, that must be vexatious for section 14 to be engaged.
12. When investigating a public authority's application of section 14, the Commissioner is also mindful of the Tribunal's view in *Hossak v Information Commissioner (EA/2007/0024)* that the consequences of finding a request vexatious are not as serious as determining conduct to be vexatious in other contexts. Consequently, the threshold for finding a request to be vexatious need not be set too high.
13. In determining whether section 14(1) was correctly applied, the Commissioner considered the factors from his guidance and the arguments provided by NHS Bristol and the complainant. As part of this process, he took into account the context and history of the complainant's correspondence and contact with NHS Bristol up to, and including, the request of 19 November 2011.

**(i) Would complying with the request create a significant burden in terms of expense and distraction?**

14. When considering whether this factor is applicable, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
15. NHS Bristol informed the Commissioner that, by the time of the request of 19 November 2011, it had received 68 pieces of correspondence regarding histopathology and pathology services from the complainant and from the campaign group to which she belonged. In the eighteen months prior to the request, it said that it had received 37 pieces of correspondence containing requests under the Freedom of Information Act. NHS Bristol indicated that these figures did not include a significant amount of informal correspondence which had not been formally logged that has been received by its members of staff involved in this area from the complainant and members of the campaign group.
16. In relation to the specific request of 19 November 2011, NHS Bristol viewed this as very large in nature and imposing a significant burden in terms of the time that would be required to provide the information requested.
17. NHS Bristol said that the consequence of dealing with the amount of correspondence and requests for information that it has received from the complainant, and the campaign group to which she belonged, had been that a lot of staff time has been taken up with providing responses. This has taken staff away from carrying out their core activities. In its view, the requests that had been received up to 19 November 2011 had

therefore imposed a significant burden in terms of expense and distraction from its normal activities. It believed that this would only have been exacerbated if it had responded to the request of 19 November 2011.

18. NHS Bristol also informed the Commissioner that since the request, it had continued to respond to the complainant's requests that related to current, rather than historical, issues related to its pathology services, in particular regarding the on-going review of pathology services in the Bristol area.
19. The complainant was provided with details of the arguments which NHS Bristol has submitted to the Commissioner. In relation to the points raised by NHS Bristol about receiving requests from other members of the campaign group to which the complainant belonged, the complainant commented that she was the person who made all of the freedom of information requests on behalf of the group. She therefore doubted that NHS Bristol has received requests from any other members of the group. Any such requests would have been made by other members as individuals and were not therefore relevant to the consideration of this issue. In addition, she said that, as far as she was aware, NHS Bristol did not know the identities of all the members of the group.
20. In considering the applicability of section 14, the Commissioner, in light of the complainant's comments, has not taken into account requests that NHS Bristol received from people other than the complainant.
21. In relation to NHS Bristol's suggestion that the figures that it provided to the Commissioner did not include a significant amount of informal correspondence received from the complainant, or members of the campaign group, which has not been formally recorded, the complainant stated that she had not sent any "informal correspondence" to NHS Bristol for over a year because informal questions and requests for information were largely ignored. She doubted that NHS Bristol has received a "significant" amount of correspondence from other members of the group for the same reason that she had previously given.
22. The Commissioner notes NHS Bristol's contention about additional informal correspondence from the complainant and other members of the campaign group. However, again, this is not a factor that he has taken into account in reaching his decision about its application of section 14.
23. As regards NHS Bristol's claim of receiving 68 pieces of correspondence about pathology services, the complainant informed the Commissioner that this was not a figure she recognised. She explained that the

campaign group to which she belonged was only formed on 11 September 2011 and did not send NHS Bristol 68 letters between then and 19 November 2011. She went on to say that, if NHS Bristol was referring to correspondence issued before 11 September 2011, again 68 was not a figure that she recognised. In her view, if NHS Bristol had a problem with correspondence received, rather than counting it, she would have expected it to identify which pieces of correspondence it had a problem with and why, and co-operate with her to resolve any issues. It had not done so.

24. As regards NHS Bristol's contention that, in the eighteen months prior to the request of 19 November 2011, it had received 37 pieces of correspondence containing requests under the Freedom of Information Act, the complainant again stated that this was not a figure that she recognised. She said that, since 2010, she had made 23 Freedom of Information Requests to NHS Bristol through the "What Do They Know" website. Two of these were for the attention of the Avon, Somerset and Wiltshire Cancer Services Network which is hosted by NHS Bristol. She had no record of making more than one or two freedom of information requests by any other means.
25. NHS Bristol provided the Commissioner with copies of correspondence from the complainant that had been received between the end of April 2010 and November 2011. The Commissioner notes that there are over 30 pieces of correspondence which contain freedom of information requests.
26. The Commissioner concentrated his review of the correspondence that NHS Bristol received from the complainant on the period between 9 July and 19 November 2011. During this time, it received 17 separate pieces of correspondence containing freedom of information requests related to the subject of pathology services. Many of these pieces of correspondence contained multiple requests. The Commissioner has calculated that there were well over a hundred requests for separate documents or pieces of information contained in this correspondence during this period. However, he also notes that one of the pieces of correspondence, the request of 21 September 2011, contained approximately 40 requests for separate pieces of information or documents and this was refused by NHS Bristol under section 12 of the Act.
27. As regards NHS Bristol's view that the request of 19 November 2011 was very large in nature and imposed a significant burden in terms of the time that would be required to provide the information requested, the complainant did not accept that it was a "large" and "significant burden". She explained that she had simply asked for the same information that NHS Bristol's Director of Commissioning requested of



two provider Trusts in respect of breast care services. She believed that, if the Director of Commissioning had received the information, then it was not a significant burden for it to be provided to her. If the Director of Commissioning had not received the information, it would not have been a significant burden for NHS Bristol to say so in response to her request.

28. In addition the complainant provided the Commissioner with a copy of an email that North Bristol NHS Trust's Medical Director had written to his staff in July 2010 which suggested that these had may have already been provided for the breast service review and so should not be too difficult to obtain. The complainant pointed out that this appeared to contradict NHS Bristol's claim that provision of the information would be a significant burden.
29. The Commissioner notes that the email in question relates to the ease with which North Bristol NHS Trust could locate and retrieve the relevant Information. North Bristol NHS Trust is a separate public authority from NHS Bristol. The issue that the Commissioner has to consider is the burden that would have been imposed on NHS Bristol in locating and retrieving the information that it held.
30. The complainant went on to point out that if NHS Bristol was concerned about staff being taken away from core activities to respond to her requests it could have contacted her to discuss how information could have been provided in a way that it would regard as less of a burden and would have satisfied her. It had made no attempt to do so.
31. In relation to the issue of the time likely to be required to respond to the request of 19 November 2011, NHS Bristol explained to the Commissioner that it had been a considerable period of time since the information that had been requested had been collated. The Director of Commissioning requested the information nearly eighteen months prior to the complainant's request. It therefore believed that it would not have all been located in one place that was easily identifiable. Consequently, it would have taken a significant amount of time to review all of the available information and ensure that it provided all of the information that had been requested.
32. In relation to the issue of diverting staff away from their core activities, NHS Bristol informed the Commissioner that between July and November 2011, its FOI Manager and several other members of staff were working on correspondence from the complainant, including freedom of information requests, on a daily basis. The quantity and complexity of this correspondence resulted in a great deal of time and resource being devoted to providing responses. As a result, this was

adversely impacting on the way that it was able to manage freedom of information requests and complaints from other members of the public.

33. NHS Bristol also explained that during this period, a considerable number of members of staff were involved in dealing with the complainant's requests on a daily basis. This included senior staff such as the Chief Executive, Chair of the Trust, Director of Strategic Development, Director of Quality and Governance, Programme Directors, Associate Director for Corporate Governance, Communications Manager and Head of Strategic Communications. In NHS Bristol's view if all of the time taken by the staff involved were added together it would have exceeded a whole time equivalent role.
34. In light of the evidence provided by NHS Bristol, the Commissioner accepts that, in the context of the number of requests that it had received from the complainant during the period between July and November 2011, complying with the request would have caused a significant burden in terms of both costs and diverting staff away from their core functions.

**(ii) Is the request designed to cause disruption and annoyance?**

35. In relation to whether the request was designed to cause disruption and annoyance, NHS Bristol commented that there was no specific mention of an intention to cause disruption or annoyance in the complainant's correspondence and that it was not possible to know the intention behind the requests that had been made. However, in light of the tone and volume of the previous requests, it believed that it was reasonable to presume that the request was intended to have this effect.
36. The complainant commented that the intention behind the request was to obtain information regarding the way services were provided and evidence as to the quality of the services. She said that this was information that patients had a right to receive under the NHS Constitution and should not have to resort to using the Freedom of Information Act to get it. She pointed out that the constitution provided that "*[t]he NHS commits to inform you about the healthcare services available to you, locally and nationally*" and "*... commits to offer you easily accessible, reliable and relevant information to enable you to participate fully in your own healthcare decisions and to support you in making choices. This will include information on the quality of clinical services where there is robust and accurate information available.*"
37. After reviewing the correspondence from the complainant, the Commissioner has not found evidence of a clear intention to cause disruption and annoyance. He has therefore not taken this into account as a factor indicating that the request may have been vexatious.



**(iii) Does the request have the effect of harassing the authority or its staff?**

38. The Commissioner was informed by NHS Bristol that the tone of the correspondence that had been received from the complainant had often been perceived as confrontational and that it had regularly contained allegations regarding the professional conduct of individual members of staff. This had clearly impacted on staff moral and NHS Bristol's ability to carry out its functions as a Primary Care Trust.
39. The complainant said that, on behalf of the group she represented, they regarded NHS Bristol's responses to its questions and requests as discourteous, defensive and hostile and regarded this as unacceptable and unprofessional. As a consequence, she explained that they were in the process of making a complaint to the Parliamentary and Health Services Ombudsman. However they did not regard these issues, which NHS Bristol had failed to resolve satisfactorily through its complaints process, as a lawful reason to refuse to provide information that they had a right to receive under the NHS Constitution. She also explained that they had tried to arrange an independently facilitated meeting with NHS Bristol to discuss some of the relevant issues but it had refused this to date. They regarded this as irresponsible and obstructive behaviour.
40. NHS Bristol provided the Commissioner with evidence from staff as to the adverse effect that their dealings with the complainant had had on their work and on them personally.
41. It is apparent from the correspondence that the Commissioner has seen that the complainant has genuine and deeply felt concerns on the issue on which she has corresponded with NHS Bristol. However, he accepts that, particularly given the nature and volume of that correspondence, it is reasonable for NHS Bristol to conclude that this was having a harassing effect on it and some of its staff.

**(iv) Can the request be characterised as obsessive or manifestly unreasonable?**

42. In relation to factor (iv), whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable, NHS Bristol pointed to guidance on section 14 from the Commissioner which suggests that this factor may be relevant where an individual continues with a lengthy series of request even though they already have independent evidence on the issue, such as a report from an independent investigation.
43. NHS Bristol informed the Commissioner that an independent inquiry had been commissioned by University Hospitals Bristol NHS Foundation

Trust. The purpose of the inquiry was to review the performance of histopathology services across the Trust following allegations about misdiagnoses, to consider whether appropriate action had been taken by the Trust to address those concerns and to make recommendations to ensure the provision of safe and effective services in future. The inquiry was made up of a panel of experts and was chaired by a senior barrister. The inquiry presented its findings in December 2010 in a 200 page report which is publicly available.

44. The Commissioner was, in addition, made aware by NHS Bristol that it also carried out its own Board level review of its involvement and actions in relation to the same issues. This report is also publicly available.
45. NHS Bristol's view was that the complainant's requests related to issues that had already been independently investigated. In addition, it argued that, taking into account evidence from previous correspondence, it was probable that any response to the request to which section 14 had been applied would have resulted in further requests.
46. The complainant explained that the information that had been requested was simply the same information that NHS Bristol's Director of Commissioning asked service providers to produce in 2010, before the two inquiries NHS Bristol referred to had reported. If the requested information had been provided in the reports, there would have been no need for a freedom of information request.
47. In the complainant's view, NHS Bristol did not seem to understand that because it had said that the inquiry was independent and had accepted its findings (the campaign group believed this was because peoples' jobs were at stake if they broke ranks), it could not order members of the public and doctors to accept it as independent and agree with findings that they regarded as contradicted by evidence. Nor could it expect the campaign group to accept NHS Bristol's own Board review, which the group asserted contained misrepresentation of the facts. She did not regard NHS Bristol's refusal to respond to legitimate concerns about the inquiry as a lawful reason to reject freedom of information requests about matters that the inquiry panel deemed were outwith its terms of reference, as was performance data on breast care services at provider NHS Trusts.
48. The complainant also contended that NHS Bristol's assertion that to respond to this request would have resulted in further requests was without substance as it had provided no examples to demonstrate its allegation that this had previously occurred.

49. It is apparent that the complainant is not satisfied with the outcome of the inquiry that was commissioned by University Hospitals Bristol NHS Foundation Trust. She has therefore sought to obtain further information on matters linked to that inquiry. Clearly NHS Bristol has provided information in response to a considerable number of requests on this area prior to the request of 19 November 2011.
50. However, the Commissioner is satisfied that had NHS Bristol provided additional information in response to the request of 19 November 2011, further requests would have followed on matters related to the inquiry because of the complainant's dissatisfaction with its findings. He has also taken account of the volume of requests made by the complainant, particularly in the period from July 2011. As a consequence, he has determined that it was reasonable for NHS Bristol to form the view that the request of 19 November 2011 was obsessive.

**(v) Does the request have any serious purpose or value?**

51. In relation to the issues of whether the request had any serious purpose or value, NHS Bristol commented that it could not say that the request had no serious purpose or value.
52. In the complainant's view the reasons for NHS Bristol's refusal to provide the information requested did not stand up to scrutiny and were merely an attempt to cover up *"incompetence on the part of or corruption within the public authority or which would simply cause embarrassment to the authority."* (a quote taken from the ICO's Awareness Guidance No 3 on the Public Interest Test). She said that under NHS reforms the organisation would cease to exist in March 2013 and the campaign group believed its strategy was to delay responding to this request until it was too late.

**The Commissioner's conclusion**

53. The Commissioner recognises that the complainant has genuine concerns about the issue to which the requests that have been made are related. However, he believes that the public authority has properly demonstrated that that the request of 19 November was vexatious, taking into account the factors considered above. He has therefore determined that NHS Bristol correctly applied section 14 of FOIA in this case.

## 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**