

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: University Hospitals Bristol NHS Foundation Trust

Address: Trust Headquarters
Marlborough Street
Bristol
BS1 3NU

Decision (including any steps ordered)

1. The complainant made a number of requests to University Hospitals Bristol NHS Foundation Trust ("UHB"). UHB refused to provide the requested information on the basis that the requests were vexatious under section 14 of the Freedom of Information Act ("FOIA").
2. The Commissioner's decision is that UHB has correctly applied section 14 to these requests.

Requests and responses

3. Between 21 September 2011 and 28 January 2012 the complainant made 12 requests for information under the FOIA to UHB. Due to the lengthy nature of these requests they are detailed in full in the Annex to this notice.
4. UHB responded to the complainants request dated 23 November 2011 on 2 February 2012 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. UHB wrote to the complainant on 18 June 2012 to request clarification from the complainant as to what elements of her response she wanted reviewed. UHB did not receive a response and therefore no internal review was carried out in relation to this request.

6. The Commissioner notes, however, that UHB responded to the complainants other requests on 12 March 2012 and also found them to be vexatious under section 14(1) of the FOIA. In internal reviews relating to these subsequent requests, dated 29 May 2012, UHB stated that it was satisfied that the requests were processed in accordance with the provisions of the FOIA and that the exemption for vexatious requests was engaged in accordance with the guidance provided by the Information Commissioner.

Scope of the case

7. The complainant contacted the Commissioner on 14 June 2012 to complain about the way that these requests for information had been handled. Specifically she complained about UHB's application of section 14 to her requests.
8. The complainant submitted 12 requests to UHB between 21 September 2011 and 8 January 2012. However, the complainant has informed the Commissioner that she does not wish to complain about UHB's handling of the first of these requests as she has obtained the requested information from another source. The details of this request are therefore not included in the Annex.
9. Therefore the scope of this case is to consider whether UHB correctly applied section 14 to the 11 requests dated between 23 November 2011 and 8 January 2012.

Reasons for decision

10. Section 14(1) of FOIA provides that a public authority is not obliged to deal with a request if the request is vexatious.
11. 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.
12. 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.
13. The Commissioner recognises, however, that it is the request, and not the requester, that must be vexatious for section 14 to be engaged.
14. In determining whether section 14(1) was correctly applied, the Commissioner considered the factors from his guidance and also the arguments provided by UHB and the complainant. As part of this process, he took into account the context and history of the complainant's correspondence and contact with UHB up to, and including, the requests in question.

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

15. 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.
16. UHB informed the Commissioner that from 31 March 2009 up to the time of the first of the requests in question (dated 23 November 2011), it had received 38 requests for information under the FOIA from the complainant. All of these requests were seeking information regarding histopathology and pathology services.
17. UHB has also informed the Commissioner that, in addition to the requests for information, it has also received a large number of interactions with, and challenges from, the complainant on a weekly basis. These have included letters to UHB's governors, the Chairman, Chief Executive, hospital managers and other members of staff, Data Protection Act Subject Access Requests, letters of complaint and also letters setting out accusations and allegations.
18. In addition the complainant has referred senior members of UHB to their respective professional bodies in regard to their probity, decision making and professional conduct. The complainant has also made representations to the Health Overview and Scrutiny Committee. She

has also made complaints to the Parliamentary and Health Service Ombudsman.

19. UHB has indicated that it has found the scale, scope and volume of these activities by the complainant (when taken in conjunction with the scale, scope, volume and duplicative nature of her FOIA requests) an almost disabling burden. It has argued that both operationally and at managerial level, the time taken to process each request is untenable and is a threat to its duties to the wider public and other service users.
20. It believed that this would only have been exacerbated if it had responded to the requests in question.
21. UHB has informed the Commissioner that staff have spent inordinate amounts of time processing and dealing with FOIA requests and a host of other correspondence from the complainant. For example, at times the Trust Secretary was required to devote up to a day a week in addressing the complainant's correspondence. Other officers – such as the Chief Executive, Freedom of Information Lead, Executive Directors and senior Managers of the Diagnostic and Therapies Division – have also been involved in processing and responding to her correspondence to the extent that it could fairly be said that they were significantly distracted from their core duties of delivering healthcare. It has argued that a conservative estimate of hours spent its employees in responding to FOIA requests prior to the requests in question, would be in the region of 200 hours in the 2011-2012 period. A significant additional time burden was caused by the complainant sending numerous and repeated correspondence to the Trust in the form of letters titled in such a way as to demand detailed analysis and action. Indeed, these correspondences were treated seriously by UHB to the extent that at least two internal investigations resulted, taking significant time and effort by members of the Board of Directors, the Internal Auditor, the Trust's Solicitors, and the Trust Secretary.
22. Furthermore UHB has informed the Commissioner that the volume and nature of the of the complainant's correspondence to the Trust, which made significant accusations and allegations of wrong-doing by the Trust's Board and Directors, for example, had the effect of causing the Trust's staff to feel stressed and, at times, bullied.
23. In light of the evidence provided by UHB, the Commissioner accepts that, in the context of the number of requests and the other contacts that it has received from the complainant during the period between 2009 and 23 November 2011, complying with the requests in question would have caused a significant burden in terms of both costs and diverting staff away from their core functions.

(ii) Were the requests designed to cause disruption and annoyance?

24. In relation to whether the requests were designed to cause disruption and annoyance, there is no specific mention of an intention to cause disruption or annoyance in the complainant's correspondence.
25. The complainant has commented that the intention behind the requests for information about the histopathology inquiry is because she is of the opinion that there has been a lack of openness, transparency and accountability. The complainant questions the use of public money in UHB's response to the histopathology misdiagnosis concerns, the appointment of the inquiry panel and the conduct of the inquiry.
26. 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 requests may have been vexatious.

(iii) Do the requests have the effect of harassing the authority or its staff?

27. UHB has informed the Commissioner that the effects of the requests made by the complainant were to cause significant stress on the staff dealing with the repeated requests as the volume was so significant and it felt as if the complainant would never be satisfied no matter how much information was provided.
28. It is apparent from the correspondence that the Commissioner has seen that the complainant has genuine and deeply felt concerns on the issues on which she has corresponded with UHB. However, he accepts that, particularly given the nature and volume of that correspondence (see paragraphs 17 to 22 above), it is reasonable for UHB to conclude that this was having a harassing effect on it and some of its staff.

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

29. In relation to this factor, UHB referred to the Commissioner's guidance on section 14 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.
30. UHB informed the Commissioner that it had already provided information in response to a considerable number of requests which have all arisen in the general context of histopathology services in Bristol, and its investigation and management of these services which

the published independent inquiry into Histopathology Services in Bristol addressed.

31. An independent inquiry was commissioned by UHB. 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.
32. It is apparent that the complainant is not satisfied with the outcome of or the procedures surrounding this inquiry. She has therefore sought to obtain further information on matters linked to that inquiry.
33. The Commissioner is satisfied that had UHB provided additional information in response to the requests in question, 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 prior to the requests in question. As a consequence, he has determined that it was reasonable for UHB to form the view that the requests in question were obsessive.

(v) Do the requests have any serious purpose or value?

34. In relation to the issue of whether the requests had any serious purpose or value the complainant has provided detailed evidence to the Commissioner in respect of each request made as to why she wants the information. She remains of the opinion that it is in the public interest for the information to be published. Bearing this evidence in mind, the Commissioner considers that the requests in question did have a serious purpose.

The Commissioner's conclusion

35. The Commissioner recognises that the complainant has genuine concerns about the issue to which the requests that have been made are related. However, taking into account the factors considered above, and in particular noting UHB's arguments about burden and expense, he considers that UHB has properly demonstrated that that the requests in question were vexatious.
36. Therefore the Commissioner has determined that UHB correctly applied section 14 of the FOIA in this case.

Right of appeal

37. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex of requests

1. Request dated 23 November 2011

1. Please provide me with a copy of the terms of [name redacted]'s appointment as chair, including the scope of her role as chair. i.e was she restricted to the inquiry terms of reference approved by the Trust Board in October 2009.

2. If she had latitude to enquire into matters not restricted to the terms of reference, please provide the documents that confirm this.

3. Please provide copies of all communications between the Trust and [name redacted] relevant to the inquiry.

2. Request dated 25 November 2011

Please provide copies of all communications between the Trust, Verita, the Royal College of Pathologists and Source BioScience relating to the College's commission to review the 26 index cases.

3. Request dated 25 November 2011

1. Please provide me with a copy of the terms of reference for Source BioSciences' commission to review specific cases as part of the Inquiry.

2. Please provide copies of all communications between the Trust and Source BioScience in relation to the Inquiry and case review.

4. Request dated 29 November 2011

On 1st November 2011 the Trust presented an update on the implementation of the recommendations to Bristol Health and Adult Social Care Commission.

Please provide the following information for these actions shown as complete in the report:

Page 2 ref 1.7

please provide the paper produced following review of consultant staffing levels.

Page 6 Ref 1.3

Please provide the protocols for the cross-site working for haemato- malignancy, Head and Neck, Lung and Her 2 Breast pathology
Please provide a copy of the letter of expectation sent to pathologists by Acting Medical Director.

Page 7 Ref 1.6

Please provide copy of communications to relevant staff and revised job descriptions completed.

Please provide the letters from CEO to Heads of Division and Lead Doctor Job Descriptions.

Page 7 Ref 1.8

Please provide the action plan for managing areas of urgent staffing need and the necessary measures that are in place to manage current workload, including outsourcing.

Page 7 Ref 1.10

Please provide a copy of the process to ensure service changes are fully supported by Histopathology

Page 8 ref 2.1

Please provide copies of the MDT review reports for both Trusts

Page 8 ref 2.2

Please provide copies of the agreed plan for on-going development of joint MDT.

Page 8 ref 2.3

Please provide copies of the MDT audit results.

Page 7 ref 2.4

Please provide a copy of the Cross Trust patient information leaflet.

Page 9 ref 3.1

Please provide copies of the following audits reports (where completed)

An audit of the double reporting protocol

An audit of reporting systems

Review of supplementary reports after multi-disciplinary team meeting

High grade serous carcinoma of endometrium-network audit

Correlation of breast tumour grading between core biopsies and resection specimens in a screened population.

Page 9 ref 3.2

Please provide a copy of the joint audit plan across both Trusts.

Page 9 ref 3.3

Please provide a copy of the EQA scoping document

Page 11 ref 7.1

Please provide a copy of the revised whistleblowing policy – and NBT's as well as to show the process inter and intra trust.

Page 11 ref 8.1

Communications strategy – please provide a copy.

Page 12 ref 8.2

Revised media protocols – please provide a copy

Page 12 ref 9.2

CEO to write to Southampton and Oxford to seek opportunities for joint working in principle - please provide Letters between Trusts

Page 13 ref 9.3

Please provide copy of the operational specification for the joint working arrangement.

Page 13, ref 10.5

When is the next Being Open update due and why is this action shown as complete when it isn't?

Page 14 ref 10.6

Purpose and role and multi-disciplinary cancer teams and team meetings - please provide a copy of the leaflet and report on the results of the pilot.

5. Request dated 5 December 2011

1. Please provide copies of all communications between [name redacted], [name redacted], Verita, the Inquiry Panel and the Royal College of Pathologists relating to the selection and identification of the 26 cases and identification of all the slides, reports and other material relating to the case review, including:

- a. to quote [name redacted] "All information and material requested by the panel" – please provide a copy of the Panel's request for information and material that [name redacted] acted upon.
- b. the process agreed with the inquiry for dealing with the external expert reports that were obtained for the the 26 cases before the inquiry was even commissioned.

2. Please provide information to explain the discrepancies for cases 11 and 15. Why was material sent for review when these two cases were not included in the [name redacted]table?

6. Request dated 7 January 2012

Request 1

Please provide the advice from the Royal College regarding a Duty of Care Review

Request 2

Please provide a copy of the standard methodology used by Source BioScience to co-ordinate the logistics of the review

Request 3

Please provide the instructions given to UH Bristol Laboratory Staff to extract the slides for the 3,500 cases and the slides for the 26 cases

7. Request dated 7 January 2012

1. Documentary evidence to explain the logic of the Professor's ([name redacted]) claim in the inquiry report that "I do not believe that the identification of only four very serious (B1) errors from the workload of a department of this size over the years from 2000 to 2009 can reasonably be considered to be surprising."

2. The Inquiry Report said "Diagnostic mistakes have been made by the histopathologists at UHBT, some — but only a few — of them being serious mistakes with a serious adverse outcome for the patients concerned".

Please provide the definition used to identify a "serious adverse outcome" for patients.

3. Please provide details of of the precise nature of the "questionable" diagnoses for each of the 26 cases (i.e. the specific allegations). This information is omitted from the Inquiry Report. For each case, also please state the specific allegation of actual or potential harm.

4. For each of the 26 cases, please advise whether the allegations were proved to be true or false, who or what organisation established this and what process was used.

8. Request dated 7 January 2012

At the South Gloucestershire Health Scrutiny Committee meeting 4th January 2012, the question of the risk assessment performed by UHBT's adult histopathology department prior to taking on paediatric pathology (after all the Trust's paediatric pathologists left) was discussed.

Please provide me with a copy of the risk assessment the adult histopathologists are bound to have carried out to ensure that they were not repeating the mistakes of the BRI Heart Scandal where doctors performed outside their level of competence and, by doing so, harmed babies and children.

9. Request dated 8 January 2012

Please provide the information requested - the evidence to support Professor [name redacted]'s instincts. "*The Royal College of Pathologists' review of the 26 cases which we asked the Trust to commission confirmed that Professor [name redacted]'s instincts about the Source Bioscience reviewer were correct*". Inquiry Report

10. Request dated 8 January 2012

Please send me all communications between [name redacted], Verita, UHBT and NBT regarding the question of whether patients and their families whose cases were considered by the Inquiry should have been invited to give evidence to the Panel.

11. Request dated 28 January 2012

Please provide all documentation possessed by UHBT between it, the panel, Verita, the Royal College of Pathologists, NHS South West, NHS Bristol, Monitor and the Care Quality Commission that sets out the discussion and decision process that led UHBT to decide to spend public money on the panel, Verita and RCPATH instead of on a proper systematic review of the areas of concern - breast, gynae, lung, skin.