

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2013

Public Authority: Hillingdon Hospitals NHS Foundation Trust
Address: Corporate Governance Department
Hillingdon Hospital
Pield Heath Road
Uxbridge
Middlesex
UB8 3NN

Decision (including any steps ordered)

1. The complainant requested information about complaints to Hillingdon Hospitals NHS Foundation Trust ('the Trust'). The Trust refused to comply with the request as it considered it vexatious under section 14(1) of the Freedom of Information Act.
2. The Commissioner's decision is that the Trust has correctly applied section 14(1) in this case and is not obliged to comply with the request.
3. The Commissioner does not require the Trust to take any steps.

Request and response

4. On 18 October 2012, the complainant wrote to Hillingdon Hospitals NHS Foundation Trust and requested information in the following terms:

Under the emergency care 328 – Please let me know as follows:

1. *Complaints made to the trust.*
2. *Complaints upheld by trust.*
3. *Complaints declined by trust.*
4. *Number of Cases in the court*
 - a. *Name of the cases in the court and their results*

For Transparency the court means as follows.

1. *All courts in United Kingdom*
2. *All cases to European Court of Human Rights.*
3. *All cases to tribunal i.e. Human Rights and Equality Board.*
4. *All cases and their results to Health ombudsmen*
5. *All cases to GMC & their result*

Similar information is required for the following category

1. *General Medicine 164*

Please also let us know the trust level of complaints in following fields.

- a. *Emergency care treatment 328*
- b. *General Medicine 164*

How does above complaint compare in relation to the national average reported by NHS from 2008 onwards.

5. The Trust responded on 29 October 2012. It refused to comply with the request, with the refusal notice citing the exemption under section 14 (1) of the FOIA as its basis for doing so.
6. Following intervention from the ICO, the Trust carried out an internal review in June 2013. It wrote to the complainant on 27 June 2013, maintaining its position that the request was vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 22 April 2013 to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Trust has correctly applied section 14(1) of the FOIA in this case.

Reasons for decision

9. Section 14(1) "*does not oblige a public authority to comply with a request for information if the request is vexatious.*"
10. The Commissioner's published guidance on section 14(1)¹, which was the current guidance at the time of the request, provides that the

¹ ['When can a request be considered vexatious or repeated?' - ICO \(Jun 12\)](#)

following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:

- 1) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
 - 2) whether the request has the effect of harassing the public authority or its staff;
 - 3) whether the request would impose a significant burden in terms of expense and distraction;
 - 4) whether the request is designed to cause disruption or annoyance; and
 - 5) whether the request has any serious purpose or value.
11. The guidance stated that it was not necessary for all five factors to be engaged, but explained that the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
12. In May 2013, the Commissioner issued new guidance² on the application of section 14(1), and this adopts a less prescriptive approach. It refers to a recent Upper Tribunal decision³ which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
13. The new guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
14. The Trust has demonstrated to the Commissioner that it has both considered the request with reference to the five headings outlined in the Jun 2012 guidance and, has also taken account of the background and history of the request.

²['Dealing with vexatious requests' - ICO \(May 13\)](#)

³ [Information Commissioner vs Devon County Council & Dransfield \[2012\] UKUT 440 \(AAC\) \(28 January 2013\)](#)

Background

15. The complainant has indicated to the Trust's Complaints Department that they have concerns about the care their spouse has received from the Trust. They have not, however, taken the Trust's advice to follow a formal approach that would enable their concerns to be investigated. Nonetheless, and reversing the opinion expressed in its refusal notice, at internal review the Trust acknowledged that the complainant's genuine concerns may have been the catalyst for the requests. It was therefore not inclined to view them as being without any serious purpose or value.
16. The Trust has, however, provided arguments as to why the criteria under 1), 3) and 4) in the guidance are met.

Obsessive

17. The Trust has told the Commissioner that the complainant's request on 18 October 2012 was the eighth supplementary request to an original request made on 3 May 2012. The Trust had provided information appropriately in response to the original and seven subsequent requests with a pattern emerging of each response then generating a further supplementary request. In the Trust's opinion *"there is a likelihood that the applicant will continue to submit requests regardless of the information provided"*.

Significant burden/disruption

18. As evidence of the unjustified level of distraction that the complainant's many requests have caused, the Trust has provided the Commissioner with a comprehensive chronology of the interaction a number of its staff have had with the complainant since their first request in May 2012. Managing the requests is, the Trust states, *"placing a disproportionate burden on staff time and diverting time from dealing with other requests."*

Conclusions

19. It is not necessary for every factor in the ICO's June 2012 guidance to be engaged in order to refuse a request on the basis of section 14(1) and the Trust has provided persuasive arguments as to why three of the five are engaged. In this case the Commissioner considers that these contribute to there being sufficient grounds to justify upholding the application of section 14(1). However, the Commissioner has considered its May 2013 guidance and also looked at the circumstances of the case more broadly.
20. Of importance in the Commissioner's consideration of whether this request is vexatious, is that it is now the eighth supplementary request

in a sequence that is taking the complainant further away from their original request. A phenomenon, described in the Dransfield decision as "*vexatiousness by drift...*"

21. While the request in isolation is not vexatious, the Commissioner has viewed it in the context of the complainant's previous requests. Adopting this broader approach, the Commissioner has decided it is the tipping point at which the complainant's requests have become disproportionate to their original aim, and made this request '*vexatious in the round*⁴.
22. As previously stated, this request was the eighth of a series of supplementary requests all of which the Trust had received in a six month period. This demonstrates a high likelihood that, had the Trust responded in the normal way to this request, it would have faced still more correspondence and supplementary requests. The Commissioner's judgement is that, on balance, the effect of this will be a significant and unreasonable burden on Trust staff and a disproportionate drain on its resources.
23. Having considered the evidence supplied by both the complainant and the Trust, the Commissioner's decision is that the Trust is correct to refuse this request under section 14(1) of the FOIA.

⁴ [Information Commissioner vs Devon County Council & Dransfield \[2012\] UKUT 440 \(AAC\) \(28 January 2013\)](#)

Other matters

24. In a letter to the Trust in January 2013, the complainant expressed dissatisfaction at not having had a response from the Trust. This was an opportunity for the Trust to carry out an internal review of how it had handled the complainant's request. The Trust did not recognise this opportunity and undertook a review only after the ICO's intervention in June.
25. Public authorities are required to carry out an internal review in all but the most exceptional circumstances. While this is not a legal requirement, there is the expectation in the Code of Practice under section 45 of the FOIA that public authorities have a complaints procedure that can be used to carry out timely internal reviews of their handling of FOIA requests.
26. The Commissioner recommends that Hillingdon Hospitals NHS Foundation Trust makes sure it has such a procedure in place.

Right of appeal

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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

Pamela Clements
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