

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2014

Public Authority: University Hospitals Bristol NHS Foundation Trust

Address: Trust Headquarters
Marlborough Street
Bristol
BS1 3NU

Decision (including any steps ordered)

1. The complainant requested information about an email they had received from the Trust; part of correspondence about the Trust's histopathology services. The Trust cited section 14 of the Freedom of Information Act (vexatious and repeated requests) and refused to comply with the request.
2. The Commissioner's decision is that the Trust has correctly applied section 14 of the FOIA and is not obliged to comply with the request.
3. The Commissioner does not require the Trust to take any further action.

Request and response

4. On 16 August 2013, the complainant wrote to the Trust and requested information in the following terms:

"In 2012 I received the attached redacted document [a redacted email dated 14 December 2010] from the Trust in response to a Subject Access Request made under the Data Protection Act 1998.

Under the FOIA 2000 please provide me with an un-redacted copy of the document."

5. The Trust acknowledged this request (and another submitted at the same time and detailed in case reference FS50528091) on 4 September 2013 but did not go on to provide a response.
6. Following contact from the complainant, the Commissioner wrote to the Trust on 12 November 2013 and asked it to provide the complainant with responses to both requests within 20 working days. The complainant contacted the Commissioner on 30 November to say they still had not received responses and the Commissioner let the Trust know on 4 December 2013 that he had accepted the complaint for investigation.
7. The complainant subsequently told the Commissioner that the Trust had provided a response to the request that is the subject of this decision notice on 2 December. The Trust refused to provide the requested information, citing the exemption under section 14 of the FOIA (vexatious or repeated requests) as its basis for doing so. The Trust also said:

"In addition, in this case the Trust has already made a considered decision as to the disclosure of the requested information, when responding to your SAR."
8. The Trust has not carried out a review of its response.

Scope of the case

9. The complainant contacted the Commissioner on 16 October 2013 to complain about the way their request for information had been handled.
10. The Commissioner has focussed his investigation on whether the Trust has correctly applied section 14 to the complainant's request.

Reasons for decision

11. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
12. The Commissioner's guidance, published in May 2013, refers to an Upper Tribunal decision that establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
13. The guidance, to which the Commissioner referred the Trust, 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.

14. In addition, and in line with the May 13 guidance, in considering the request, the Commissioner has taken into account factors such as intransigence, unreasonable persistence, and frequent and overlapping requests.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that these are of particular significance in this case.
16. The Commissioner recognises that features of this request are comparable to earlier requests which, following complaints to the Commissioner, were found to be vexatious (FS50452727; FS50471080; FS50483042; FS50481492 and FS50505848). However, he has approached this case on its own merits and assessed the Trust's response and reasoning against his May 2013 guidance.

Is the request likely to cause a disproportionate level of disruption, irritation or distress?

17. The request is the latest in a long series of requests that the complainant has made to the Trust and other local healthcare bodies about histopathology services at the Trust and a related inquiry in 2010 - over 25 composite and single requests on this matter specifically, comprising over 100 different requests for information. This is in addition to a significant amount of other correspondence and interaction.
18. 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 Commissioner recognises, however, that it is the request, and not the requester, that must be vexatious for section 14 to be engaged.
19. As in its previous submissions to the Commissioner, the Trust indicated that it has found the scale, scope and volume of the complainant's FOI requests and correspondence 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. When seen in the context of the complainant's previous communications, the Commissioner therefore considers that this request

adds to the cumulative level of disruption that managing the complainant's persistent and overlapping requests and correspondence has caused the Trust.

21. In 2012 the complainant had made a Subject Access Request (SAR) under the Data Protection Act. The Commissioner notes that the Trust had already considered what information contained in the email in question it would be appropriate to release, and had communicated this decision to the complainant at that time. The Commissioner therefore agrees with the Trust's argument that the disruption in responding to this request is likely to cause would be disproportionate.

Is the impact on the authority outweighed by the purpose and value of the request?

22. As in previous decisions, the Commissioner recognises that the complainant has had genuine concerns about the Trust's histopathology services, and the 2010 inquiry, and that there may be a serious purpose behind the request. He notes however, the Tribunal's comments in the appeal decision EA/2012/0262:

"It is clear that the motive behind the request was to harry NHS Bristol, there was no serious purpose to the request in seeking information and all the documentary evidence shows a systematic pattern of harassing individuals who are unable or unwilling to comply with [their] demands."

23. In addition, the First Tier Information Rights Tribunal has recently pronounced on the appeals in respect of decision notices FS50452727, FS50471080, FS50481492, FS50483042, FS50462149, FS5074252, FS50488646 and FS50483036 following a hearing on 17 January 2014. The Tribunal agreed that the requests were vexatious and upheld the Information Commissioner's decision, concluding:

"There is a recurrent theme, however, in all the cases before us; the requests are unlikely to produce information of any value, let alone forward [the complainant's] proclaimed aims; their scope and lack of value is such as to make the NHS authorities concerned to rightly invoke the protection of Section 14 FOIA and to say "enough is enough". In our judgement, all these requests overstep the mark. They no longer represent legitimate campaigning; they are an abuse of the Act."

(Conclusion 35)

Summary

24. An inquiry in 2010 reviewed the performance of histopathology services across the Trust following allegations about misdiagnoses. It considered whether the Trust had taken appropriate action to address concerns and made recommendations to make sure the Trust provided safe and effective services. The inquiry was made up of a panel of experts and was chaired by a senior barrister.
25. The inquiry presented its findings in December 2010 in a 200 page report that is publicly available. The matter that informs the complainant's request has therefore been subject to external scrutiny through an inquiry that, in turn, could be seen to be reasonable, fair and impartial. The Commissioner therefore considers that there is no additional public interest or value to the request that would outweigh the impact on the Trust if it were to respond.
26. The Commissioner has looked both at the request on its own merits, and considered the wider history and context. He considers it probable that it is part of the complainant's ongoing campaign against the Trust, that its purpose is ambiguous and that responding to it would impose an unjustified level of disruption on the Trust, out of proportion to any value that the complainant or wider public might derive from the response. The Commissioner is satisfied that the request is vexatious and that University Hospitals Bristol is correct to apply section 14 and refuse to comply with it.

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: GRC@hmcts.gsi.gov.uk

Website: 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

Pamela Clements
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