Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **15 July 2015**

Public Authority: **Isle of Wight NHS Trust**
Address: **St Mary's Hospital**
Parkhurst Road
Newport
Isle of Wight PO30 5TG

Decision (including any steps ordered)

1. The complainant has requested information from Isle of Wight NHS Trust ('the Trust') about ambulance response times. The Trust initially said that the information was exempt from disclosure under section 40(2) of the FOIA as it would need to manually examine patients' health records to provide the information. During the Commissioner's investigation, the Trust altered its position and now says that it is not obliged to comply with the request because it is vexatious under section 14(1).

2. The Commissioner's decision is that the request is vexatious and the Trust is correct not to comply with it. The Commissioner does not require the Trust to take any further steps.

Request and response

3. On 11 November 2014, the complainant wrote to the Trust and requested information in the following terms:

"I would like to know the ambulance time response for every incident since 2010. I would also like the data for the following fields:
- Date
- Postcode (at least the first part)
- Street
- Chief complaint
- Category
- Response time
- Station responding
Please, provide this data in a machine readable format."

4. The Trust responded on 5 December. It said that to provide the requested information the Trust would have to manually examine patient health records. It said that since these constitute personal data under the Data Protection Act 1998 (DPA) it was not obliged to comply with the request under section 40(2) of the FOIA.

5. Following an internal review the Trust wrote to the complainant on 8 January 2015. At that point, it maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 30 January to complain about the way his request for information had been handled. He said that other organisations had provided him with the same information without breaching the DPA.

7. During the Commissioner's investigation, the Trust altered its position. It said that the process of redacting personal data from the requested information would be a disproportionate burden on the Trust, making the request vexatious under section 14(1). In correspondence dated 16 June, the Commissioner advised the Trust to inform the complainant of its new position.

8. The Commissioner initially focussed his investigation on whether the Trust is correct not to comply with the request because it is vexatious. This involved consideration of whether some of the requested information is personal data.

Reasons for decision

9. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information under the FOIA, if that request is vexatious.

10. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance 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

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

11. 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.

12. 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 upon it and balance this against the purpose and value of the request.

13. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. In this case, the Trust initially told the Commissioner that it did not hold all the elements of the requested information together in one place - such as a single report, file, system or spreadsheet. During the Commissioner's investigation, the Trust asked its IT system supplier whether, hypothetically, it would be possible to generate a bespoke report that included all the elements of the requested information. Due to a misunderstanding, the system supplier went on to produce such a report: a process that the Trust says took 6.5 hours, and for which the Trust may incur a charge.

14. The report that was generated consists of 61,469 lines of data in total – one line for each ambulance call out over the five year period in question. The Trust has provided the Commissioner with an unredacted extract. The information captured automatically in the report includes information about individuals' addresses, and information about the health of individuals.

15. The Trust says that in order to release the requested information, it would need to redact from the report all the information that is personal data as this is exempt from disclosure under section 40(2).

Is the information 'personal data'?

16. Personal data is defined in the DPA as:

    'data which relate to a living individual who can be identified –

    (a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.'

17. The complainant has not asked for the names of any individuals and on the face of it, the requested information appears to be anonymous information. The Trust argues however, that it would be possible – particularly given the small geographic size and population of the Isle of Wight – to ascertain the name and identity of one or more of the individuals to which the requested information relates. This could be done by piecing the requested information together with other information that may already be in the public domain, such as online newspaper articles.

18. The so called 'motivated intruder' test involves considering whether someone without any prior knowledge would be able to achieve re-identification *if* motivated to attempt this. Such an individual might, for example, carry out a web search, search archives or use social networking in order to identify an individual from whose personal data, anonymised data has been derived. Having had sight of an unredacted version of the extract of the report, the Commissioner agrees that there is a credible risk that it would be possible to identify individuals from the information, if motivated to do so. He agrees that some of the requested information is therefore personal data. The complainant has also requested information on the 'chief complaint' ie the health condition of the individuals concerned at the time of the ambulance call out. Information about individuals' health is categorised as sensitive personal data and needs to be treated with particular care.

19. The Commissioner is satisfied that the Trust is correct when it says that it would need to redact this personal and sensitive personal data before the remaining information could be disclosed to the complainant. Section 40(2) of the FOIA says that information is exempt from disclosure if it is personal data and if a condition under either 40(3) or 40(4) is satisfied. The condition under 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA.

20. The Commissioner considers that releasing the personal data in this case would contravene the first data protection principle: that personal data 'shall be processed fairly and lawfully…' This is because he considers it highly unlikely that the thousands of individuals concerned will have consented to their personal data being released to the public; that they could reasonably expect that their personal data would not to be processed in this way and that disclosing it would be likely to cause one or more of the individuals concerned a degree of distress.

Would responding to the request place a disproportionate burden on the Trust?

21. The personal data in question (elements of individuals' addresses and their health conditions) is held in the report – an Excel spreadsheet – in such a way that it would not be straightforward to redact. With respect to the addresses, the first part of each post code is included in the report, with this element of the address being held in a discreet column. Other elements of each address – the house number or name and the street – are not held in discreet columns, one or more of which could be quickly redacted. Rather, these elements of each address are held in one 'cell'. As mentioned above, the report contains 61,469 lines of data. The Trust argues that to review and analyse the report and manually redact from each of 61, 469 cells particular personal information relating to each address, such as the house number or name, whilst possibly keeping elements that have been requested (the street) would take an excessive amount of time – in excess of 18 hours – and be a disproportionate burden to the Trust. For this reason the Trust considers the request to be vexatious.

22. The Trust argues that the burden involved in redacting particular information from the report is not proportionate because the Department of Health already publishes up to date Ambulance Quality Indicator data on its website[1]. This includes data about the performance of the Isle of Wight NHS Trust's ambulance service.

23. Section 12 of the FOIA says that a public authority is not obliged to comply with a request if, to do so, would exceed the appropriate cost limit of £450 (or 18 hours of staff time). However, while the processes of locating and preparing information can be included in these costs, the process of redacting information cannot. Since it is redacting exempt information that the Trust claims will take an excessive amount of time, it is not able to apply the provision under section 12 to this request, and it is instead relying on section 14(1).

24. The complainant has told the Trust and the Commissioner that other other organisations have provided him with the exact information he is now requesting from the Isle of Wight Trust. He queried why the Trust could not also easily provide it. The Trust explained that other organisations (ie NHS Trusts) nationally do not manage their information and records in the same way. The way the Trust currently manages its

[1] http://www.england.nhs.uk/statistics/statistical-work-areas/ambulance-quality-indicators/ambulance-quality-indicators-data-2015-16/

information means that it is not able to provide the specific information the complainant has requested without first going through a lengthy process of redaction.

25. The Commissioner's guidance on vexatious requests points out that the Commissioner places a high threshold on the application of section 14 in such circumstances where the central argument relies on the argument that responding would cause a disproportionate burden on the authority. He identifies that an authority is most likely to have a viable case where:

    - The requester has asked for a substantial volume of information and
    - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
    - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

26. In this case, the complainant has requested information covering a period of five years. This has generated a report consisting of 61,469 lines of data which the Commissioner considers to be a substantial amount of information. He is aware however, that even substantial volumes of information, if it is held electronically, can, in some circumstances, be managed and manipulated extremely quickly.

27. Having had sight of an extract of the report in question, the Commissioner can confirm that it contains personal data and sensitive personal data, for the reason given at paragraph 18. The Trust recognises that there is a risk that it may breach the Data Protection Act if it was to inadvertently release some of this information into the public domain. To avoid this, the Trust says it would need to take particular care to make sure that all exempt information was redacted – this would necessarily increase the time it would need to spend on the process of redaction.

28. As mentioned at paragraph 21, it is possible in some circumstances to manage and manipulate electronic information quickly and efficiently. This is not the case here. The information in question is held in an Excel spreadsheet. With regard to the personal information relating to addresses, had certain elements of the address – the house number or name and the street – each been held in a separate 'cell', it would be straightforward to highlight the entire column containing the particular element and delete or redact it in its entirety. This would effectively delete or redact 61, 469 items of personal data in a matter of seconds. However, with reference to this information, these elements of each address are contained in one 'cell'. This means that to redact or remove

particular elements so as to sufficiently anonymise the data, it would be necessary to review each address individually and manually delete particular address elements from every cell. Given that there were 61,469 incidents in the five year period in question, which translates into 61,469 lines of data, the Commissioner agrees that this would be a very time consuming process.

29. The Commissioner is satisfied that it is reasonable for the Trust to take a cautious approach to the personal and sensitive personal data held in the requested information. A 'risk based' approach to processing the information for disclosure would take up less resource. However, the Commissioner considers that the Trust is correct when it says that a detailed redaction exercise is necessary to make sure that all personal data, and sensitive personal data relating to people's health, is redacted. To undertake this process would be a considerable burden to the Trust, as discussed at paragraph 21.

Does the request have any serious purpose or value?

30. The Trust believes that the request has been submitted by an individual employed by a digital agency that offers bespoke software development. The Commissioner notes that the complainant has requested similar information from other organisations. This being the case, the Commissioner considers that specific information requested about the Isle of Wight ambulance service's performance and, indirectly, how it manages information about its performance, may well be of considerable value to the complainant. As well as providing information on the performance of the Trust's ambulance service, it would also help the complainant, or any similar relevant agency, to identify possible IT or software problems to which they could offer solutions.

31. Specific information about the performance of ambulance services in the UK does however, have considerable value. It informs service users and providers how well the local service is performing; offering reassurance or highlighting where there are challenges that can then be addressed. Because this information therefore has a value, information on ambulance response times is already made publicly available on the Department of Health's website, as discussed at paragraph 22.

Conclusions

32. The Trust has not said that it is not possible to provide the specific information that has been requested. Although the request does not meet the criteria for vexatiousness listed at paragraph 12, the Trust's argument is that it is the substantial burden involved in responding to the request that makes it vexatious – a situation discussed at paragraph 14.

33. In Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013), Judge Wikeley recognised that the Upper Tribunal in Wise v The Information Commissioner (GIA/1871/2011) had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that:

'Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it.'

34. The complainant has not identified a strong value or purpose to their request. Neither has the Trust been able to identify a strong value or purpose that is not already served by the publication of ambulance service performance data on the Department of Health's website. The information requested may (or may not) provide a further degree of transparency on the performance of the Trust's ambulance service.

35. This lack of a strong and identifiable purpose or value to the request weakens the argument in favour of complying with it. This argument is not strong when balanced against the considerable amount of work the Trust says it would need to do – taking in excess of 18 hours – in order to prepare the information for release. Releasing information under the FOIA is, effectively, release to the world at large. The Commissioner is of the view that, for example, each house number or name – is the personal data of each patient. This is because disclosing this information could lead to a specific individual being identified. In turn this would disclose sensitive personal data about that individual – namely, information about their health. The Trust would therefore need to take particular care to redact this information as it would be unfair to disclose it and therefore a breach of the Data Protection Act. The Commissioner agrees that taking particular care would increase the amount of time needed to prepare the information. He does not consider this to be a proportionate or sensible use of the Trust's resources.

36. Having considered all the circumstances of this case, the Commissioner is satisfied that the request is vexatious because responding to it would be a disproportionate burden to the Trust.

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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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 .....

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