Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **16 December 2015**

Public Authority: **Dr P J Southern**
Address: **Dicconson Group Practice**
Wigan Health Centre
Frog Lane
Wigan
WN6 7LB

Decision (including any steps ordered)

1. The complainant has requested meeting minutes from Dicconson Group Practice. DGP refuses to comply with the request which it says is vexatious under section 14(1) of the FOIA.

2. The Commissioner's decision is that Dicconson Group Practice:

   - complied with section 10(1) of the FOIA because it responded to the request within 20 working days; and

   - correctly applied section 14(1) to the request and is not obliged to comply with it.

3. The Commissioner does not require Dicconson Group Practice to take any steps.

4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. For ease and clarity, this notice refers to

the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

5. On 1 September 2015, the complainant submitted a request for information in the following terms:

6. *"Find enclosed payment for copies of the recorded minutes of your meetings for the years listed below.*

2009 – 2010
2010 – 2011
2011 – 2002 [sic]
2013 – 2014
2014 – 2015
2015 – to present."

7. Dicconson Group Practice ('DGP') responded on 24 September. It said that the request is vexatious because redacting information from the minutes would be an undue burden. DGP went on to say that if the complainant was able to narrow his request, it would be willing to review this decision. It said it was in the process of updating its website and expected to publish the minutes of a particular meeting (the Patient Participation Group) on the site.

8. The complainant did not submit a more specific request and the matter was referred to the Commissioner.

Scope of the case

9. The complainant contacted the Commissioner on 29 September to complain about the way his request for information had been handled. He is not satisfied with DGP's application of section 14(1) to his request. He also considers that DGP took too long to respond to the request.

10. The Commissioner has considered whether DGP has correctly applied section 14(1) to the request and whether it complied with its obligation under section 10(1).

Reasons for decision

Section 10(1) – time for compliance

11. Section 1(1) of the FOIA says that when a public authority receives a request it must confirm or deny whether it holds the information and, if it does, the information must be communicated to the requester.

12. Section 10(1) of the Act says that public authorities must comply with section 1(1) promptly, and within 20 working days of receiving the request.

13. In this case, the complainant submitted his request on 1 September. A response was due by 29 September and DGP responded on 24 September ie within 20 working days of receiving the request. Consequently, it did not breach section 10(1).

Section 14(1) – vexatious requests

14. 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.

15. The term "vexatious" is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. In short they include:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

16. 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.

17. The Commissioner's guidance suggests 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.

18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. These factors appear to be relevant in this case.

The complainant's arguments

19. The complainant considers that his request is for information that DGP has included in its publication scheme, and which therefore should be available. The Commissioner notes that DGP's publication scheme refers to:

"Regular practice meetings take place and all decisions are recorded in minutes. Minutes are available on request, although any commercially sensitive data or data which falls under the Data Protection Act will be excluded."

20. The complainant says that, based on the Commissioner's guidance: '*Definition Document for Health Bodies in England'*, DGP should release to him meeting minutes from the current and previous three years, at least.

21. The complainant says that DGP's view that the information contained in the minutes is not of public interest, which it also stated in its response of 24 September, is not in line with guidance the Commissioner has produced. Nor is DGP's position that redacting information from the minutes would be an undue burden.

Dicconson Group Practice's submission

22. DGP says that the complainant was a patient of the practice until 2011 when he was removed from the practice list on the grounds that the practice was unable to meet his healthcare needs.

23. Following his removal from the list, the complainant made a subject access request (SAR) and DGP released his personal data to him in September 2011.

24. In March 2012, the complainant brought litigation against DGP and Wigan Primary Care Trust, claiming disability discrimination, harassment and breach of human rights. In 2013, the complainant discontinued the litigation.

25. During 2014, the complainant made a further subject access request and submitted a separate complaint to the Commissioner about DGP's handling of this SAR which was not upheld. He also submitted a

complaint to the Parliamentary and Health Service Ombudsman (PHSO) about a separate matter concerning DGP. The PHSO did not uphold this complaint.

26. In January 2015, the complainant submitted a request to DGP for information on DGP's fee for releasing the meeting minutes that are the subject of the current notice. He subsequently complained to the Commissioner about DGP's response to that request and the Commissioner's decision on this earlier case is at FS50576462.

27. In June 2015, DGP provided details about its fees to the complainant and on 1 September, the complainant submitted the current request, which is for recorded minutes of all DGP's meetings for the last six years. Although the complainant appears to have omitted 2012 – 2013 from his request, DGP included this year in its considerations.

28. DGP says that key to its application of section 14(1) of the request is the question of whether responding to the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

29. The minutes in question include the minutes of GP partners' meetings. DGP has estimated that approximately 75% of the information in partners' meeting minutes would have to be redacted because it is the personal and sensitive personal data of third persons or is confidential because it is commercially sensitive. The minutes also include those from staff meetings, primary care team meetings and significant event meetings. DGP says an even higher percentage of information would have to be redacted from these minutes because of the amount of third person personal and sensitive personal data that they contain.

30. DGP has provided to the Commissioner examples of the partners' meeting minutes and he can confirm that they are as DGP describes.

31. In response to the complainant's request, DGP reviewed and redacted confidential, third person personal data and sensitive personal data from one year's set of minutes from partners' meetings. It says this exercise took one hour and twenty minutes. Completing the exercise for the remaining six years (DGP calculated seven years as it had included 2012-2013) would take at least nine hours and twenty minutes. Further time would then need to be spent reviewing and redacting information from six (or seven) years' worth of minutes from DGP's other meetings.

32. DGP says that reviewing and redacting information from the minutes would distract its staff from their other duties; attending to the practice's other administrative needs. It says that the burden involved in the reviewing and redacting process is disproportionate because the

information remaining in the minutes would be so limited as to be meaningless.

33. DGP has noted that the complainant has not said why he wants the information he has requested but has considered why he may have done so. It has told the Commissioner that the minutes do not contain any information on the issues he raised in his litigation and that it has already released his own personal data to him as result of his SAR.

34. DGP has referred to the criteria for vexatiousness that is included in the Commissioner's published guidance on section 14, as follows:

35. **Scattergun approach**: DGP says that it considers that the complainant's request appears to be part of a completely random approach that lacks any clear focus and/or is designed solely for the purpose of fishing for information without any clear idea of what might be revealed.

36. **No obvious intent to obtain information**: DGP says it has provided all the information the complainant has requested up to this point. It now considers that he is abusing his right to access to information by using the FOIA legislation as a means of venting his anger with the practice, or in order to harass or annoy the practice by requesting information that is of no use to him.

37. **Futile requests**: The complainant brought litigation in the employment tribunal, which he then chose to withdraw. DGP says that, to that extent, the issues that seemed to have concerned him have already been conclusively resolved.

38. In conclusion, DGP has told the Commissioner that it accepts it is obliged to be open and transparent but that it considers it is impossible to see what purpose the requested information will serve. DGP says that, based on its experience of dealing with him before and since 2011, it is likely that the complainant will not be satisfied with any response it may now provide and will submit numerous follow up enquires. That, according to DGP, the complainant has continued to correspond with the PHSO and NHS England following the PHSO's report into his complaint is evidence of this.

The Commissioner's decision

39. The complainant says that he is simply requesting information – practice meeting minutes – that DGP says on its publication scheme that it will release. As such, DGP should release the information he has requested. DGP has confirmed to the Commissioner that the reference to 'practice meetings' refers specifically to one set of meetings, namely partners' meetings. It does not refer to all the different meetings that the

practice holds as well as partners' meetings, such as staff meetings and primary care team meetings. DGP has acknowledged that its publication scheme may not be as clear as it could be, and says it intends to review the scheme as a result of this complaint.

40. The complainant's request is for the "recorded minutes of your meetings". DGP asked the complainant if he could narrow down his request but the complainant did not do so. DGP consequently interpreted the request as a request for all the minutes from its different meetings for the last six years. The Commissioner considers this is a reasonable interpretation.

41. Section 12 of the FOIA releases a pubic authority from its obligation to respond to a request if the cost of doing so would exceed the appropriate cost or time limit: £450 and 18 hours in this case. However, an authority cannot consider the cost and time involved in redacting information when it is considering whether the provision under section 12 applies to a request.

42. As in this case, an authority must consider whether the process of redacting information in order to provide a response to a request is so disproportionately burdensome as to make the request vexatious under section 14(1).

43. The Commissioner appreciates that DGP has undertaken a sampling exercise and has redacted information from one years' worth of partners' meeting minutes – this took approximately 90 minutes. Redacting information from the remaining five years of these meetings, and from six years of minutes from its other meetings would take a considerable amount of time and is likely to be in excess of the 18 hours that is the limit under section 12. Particular care would need to be taken in this process to make sure that the personal data and sensitive personal data of DGP's patients had been redacted.

44. On this argument alone, the Commissioner considers that the request is vexatious. This is because of the disproportionate distraction this exercise would be to DPG staff. It is disproportionate because the Commissioner can see no wider public interest arguments for releasing this information into the public domain. Nor has the complainant provided any.

45. The Commissioner notes that DGP says that the redaction process would be disproportionate because the remaining information would be meaningless. However this alone is not a valid reason for not complying with the request.

46. DGP has also considered why the complainant might have requested the information - for example he could have wanted his own personal data or information concerning the litigation proceedings he began - and why, because the meeting minutes do not contain this information, they would not be useful for him. An applicant's motive for requesting information is generally not relevant and applicants are not required to say why they want particular information. Motive only becomes a factor in some cases where an authority is considering whether the request is vexatious under section 14(1).

47. The Commissioner emphasises that it is not simply the cost of responding to the request that makes the request vexatious; in another case, the Commissioner might find that that cost is reasonable. In this case, there does also seem to be evidence that suggests that the complainant has something of a personal grudge against DPG since it removed him from its practice list in 2011. It is reasonable to assume from the evidence that DGP has provided that the complainant is motived by a desire to deliberately distract DGP and cause it annoyance. This further supports the Commissioner's conclusion that the request is vexatious under section 14(1). To summarise, in the particular circumstances of this case the cost and wider burden imposed by the request is unjustified because of its lack of any serious purpose or value.

Other matters

48. The complainant has complained to the Commissioner that it is difficult to find DGP's publication scheme on its website as there is no obvious link or reference to it.

49. Although the scheme can be quickly found through the website's 'Search' function, the Commissioner notes that the publication scheme currently sits under the 'News' section of its website. This may not be the most obvious place for it and DGP may want to consider this when it undertakes the review of its publication scheme mentioned at paragraph 39.

Right of appeal

50. 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

51. 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.

52. 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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