

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 December 2017

**Public Authority:** Norfolk and Suffolk NHS Foundation Trust

**Address:** Hellesdon Hospital  
Drayton High Road  
Norwich NR6 5BE

#### Decision (including any steps ordered)

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1. In two requests, the complainant has requested information about claims against Norfolk and Suffolk NHS Foundation Trust ('the Trust') and Data Protection Act breaches.
2. The Commissioner's decision is that:
  - the complainant's requests are vexatious under section 14(1) of the FOIA and the Trust is not obliged to comply with them.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 15 March 2017, the complainant wrote to the Trust and requested information in the following terms:

*"Please act via FOI to provide legal case facts going back over five years , where persons , Anonymised have brought what claims for what*

*reasons, when against NSFT ? And indicate at what stage those claims were settled , in whose favour NSFT or public person e.g. out of court , by court Order.*

*If any information is available on the public web you can I the interim send such a, direct link."*

5. On 19 April 2017, the Trust responded. It refused to comply with the request which it categorised as vexatious under section 14(1) of the FOIA.
6. The complainant requested an internal review on 19 April 2017. The Trust sent her the outcome of its internal review on 27 June 2017. It upheld its original position.
7. On 9 May 2017, the complainant re-submitted a request that she said she had first submitted to the Trust on 3 March 2016. It appears that the Trust had refused this request when it had originally been submitted.
8. This request was as follows:

*"On page 5 of the attached document dated 2013 the Trust states that their data act offences have decreased.*

*Please avail within your 18 hours allocated time for FOI, from 2006 the data offences records year by year, by which at 2013 these will show ' a reduction ", 7 years later.*

*Add please the figures from 2013 to date.*

*Add please some reasonable account for " having no record of the ICO Assessment in my case " that came subsequent to [Named Individual] finding in my favour two general complaints from 2006-2009.*

*Have you FOI Accessed the" file that [Named Individual] placed in a cupboard to which he has a key via an office near the top of the main entrance stairway " for such FOI copy ? viz it is FOI because nsft HAS been keeping records of data act offences ( to this general complaint file I have a right of access I again note , but NSFT currently denies to me )*

*You have twenty working days to comply."*

9. The complainant told the Commissioner that she had not received a response to this request when she submitted it in May 2017. During her investigation, the Trust acknowledged that it had overlooked this

request and confirmed that it also considered this request to be vexatious under section 14(1) of the FOIA.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 20 April 2017 to complain about the way her requests for information had been handled.
11. The Commissioner's investigation has focussed on whether the complainant's two requests are vexatious under section 14(1) of the FOIA.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

12. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.
13. 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 her 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
14. 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.

15. 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.
16. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
17. The initial submission the Trust provided to the Commissioner in support of its application of section 14(1) to the requests was somewhat brief. In the submission, the Trust indicated that it considered that complying with the requests would be an unjustified burden to it; that the requests were futile and that they demonstrated an unreasonable persistence and scattergun approach.
18. The Trust said that the context and history of the request was a major factor in it determining that the requests are vexatious and it had considered previous information requests the complainant has submitted to it. In addition, it had considered requests she has submitted under the Data Protection Act and service complaints she has submitted.
19. It told the Commissioner that it has been in contact with the complainant for many years and that over the last year this has taken up a considerable amount of time of numerous members of staff, and has taken them away from their normal day-to-day duties. Its contact with the complainant has included a court case and a pending Civil Restraining Order case. The Trust said it is aware that a number of other local public authorities have been receiving ongoing communications from the complainant, of a similar nature and over a long period of time.
20. The Trust considered the requests being made cause an unjustified level of disruption, irritation and distress. The requests are very unclear and it said it is difficult to identify if correspondence is a request for information under the FOIA and, if so, what is being requested. Historically, the Trust says it has often sought clarification from the complainant.
21. In the submission the Trust said that all communications from the complainant have been sent to its Legal Services team to try to control the level of staff time that is taken up with the complainant. As a result, the level of communication with the complainant has been reduced by the Trust, due to the legal cases. In the Trust's view, the complainant is abusing the right of access to information under the FOIA in an attempt to try to continue to make the Trust respond to communications.

22. In a further submission dated 22 November 2017, the Trust told the Commissioner that it has received nine FOI requests from the complainant since 1 January 2014 (all the requests broadly cover governance issues). The Trust also said that the complainant contacts several of its staff by email, with the indication that this contact has been on more general matters but that the volume of contact has been significant.
23. The Commissioner then spoke to the Trust on 27 November 2017 and the Trust gave her further information on the background and context of the requests. The Trust acknowledged that the volume of FOI requests specifically that the complainant has submitted since 2014 is not especially high. However, it says that as a result of the Commissioner's investigation, it undertook a search of the email accounts of 16 staff members known to have contact with the complainant. It retrieved general email correspondence comprising approximately 1000 sides of A4 paper, covering the period from November 2010 to the present. This is only the material that was retained; other correspondence may have been deleted over the years.
24. The Trust explained that the situation seems to stem from a situation involving the complainant in 2008, with the volume of correspondence sent by the complainant to the Trust increasing from 2013 when a separate incident occurred and the complainant was concerned that the Trust had inappropriately disclosed her personal data to other agencies. The Trust says it has assured the complainant on many occasions that it disclosed information about her to other agencies in line with its usual policies and procedures.
25. The complainant has not accepted this and has continued to write to Trust staff, bringing what the Trust considers is a series of "misconceived" complaints and proceedings against it. The complainant has brought data protection and FOIA Trust complaints to the Commissioner previously and the Trust has also told the Commissioner that the complainant has brought complaints to the Parliamentary and Health Service Ombudsman, to the Court and to NHS Litigation. The Commissioner understands that these complaints to other agencies have not been upheld. The result of the complainant's long and overwhelming contact with the Trust is the Civil Restraining Order that is pending.
26. While the number of FOIA requests specifically that the complainant has submitted to the Trust since 2014 is not significant, the Commissioner is nonetheless inclined to the view that the two requests that are the subject of this notice can be categorised as vexatious. The Commissioner has considered all the circumstances of the case in coming to this view. She has taken account of the number of years the complainant has been writing to the Trust; the volume of general

correspondence she has sent to the Trust in that time; the fact that the Trust has comprehensively addressed the issue about the Trust's governance that appears to be the complainant's central concern; and the resulting Civil Restraining Order that is pending.

27. The purpose of the FOIA is to give members of the public specific recorded information that a public authority holds. In this case, the complainant appears to be using the FOIA simply as another means to communicate with the Trust when, in all important respects, that communication has ceased to have any meaningful purpose. In its long history with the complainant, the Trust has addressed her principal concern about its governance. At this point therefore, the Commissioner is satisfied that responding to the complainant's requests, which she has submitted to the Trust in addition to a very high volume of other correspondence, would be a burden to the Trust that is unjustified. The Commissioner is therefore satisfied that on this occasion the requests meet the criteria for vexatiousness under section 14(1) of the FOIA.

## Right of appeal

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**