Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2020

Public Authority: Royal Free London NHS Foundation Trust
Address: Royal Free Hospital
Pond Street
London
NW3 2QG

Decision (including any steps ordered)

1. In 2018 the complainant submitted a request to the Royal Free London NHS Foundation Trust ('the Trust') for information associated with the creation of a subsidiary property service company. The request covered attachments to email correspondence but the Trust did not consider the attachments in its response. The Trust has now considered the request for attachments and has refused to comply with this aspect of the original request, citing FOIA sections 12(1) (cost exceeds appropriate limit) and section 14(1) (vexatious requests).

2. In addition, the Trust indicated to the complainant that it considered that information in the attachments would engage the exemptions under section 36(2)(prejudice to effective conduct of public affairs), section 40 (personal data), section 41 (information provided in confidence), section 42 (legal professional privilege) and section 43(2) (commercially sensitive) of the FOIA.

3. The Trust subsequently advised the Commissioner that, at this point, it is relying on section 12(1) and section 14(1) only in respect of the attachments.

4. The Commissioner's decision is as follows:

    - The Trust cannot rely on section 12(1) of the FOIA to refuse to comply with the request for the attachments.

- The request for attachments can be categorised as a vexatious request under section 14(1) of the FOIA because of the disproportionate burden that complying with it would cause the Trust.

5. The Commissioner does not require the Trust to take any remedial steps.

Background

6. On 4 April 2018 the complainant had requested information of the following description:

> "*1) The section of the minutes of the confidential Board meeting held on 24th January 2018, which relates to the exploration of the creation of a wholly owned subsidiary property service company.*
>
> *2) All papers presented to the confidential Board meeting held on 24th January 2018 which relate to the item on the agenda regarding the exploration of the creation of a wholly owned subsidiary property service company.*
>
> *3) All other information held which relates to the Trust's exploration of the creation of a wholly owned subsidiary property service company, regardless as to whether that information is dated before or after the confidential Board meeting held on 24th January 2018. I would expect that the Trust would hold recorded information relating to their exploration of the creation of a wholly owned subsidiary property services company, and that this may be located in emails, memoranda, notes of meetings, minutes of meetings, records of decision taken and other records."*

7. The Trust disclosed some information and withheld other information under section 36(2) and section 43(2) of the FOIA. The complainant subsequently submitted a complaint to the Commissioner about the Trust's response of 2 May 2018 and internal review of 12 November 2018. This resulted in the Commissioner's decision in FS50774281.

8. In the FS50774281 decision, the Commissioner found that the Trust could withhold some information as it was out of scope of the request. She found that other information could be withheld under section 36(2) and section 43(2) of the FOIA. However, the Commissioner also ordered the Trust to issue the complainant with a response in respect of attachments to correspondence in an email bundle that fell within the scope of the request. This information – the attachments – is what is under consideration in the current complaint.

9. The complainant appealed the FS50774281 decision to the First-tier Tribunal (Information Rights)(FTT), appeal reference EA/2019/0290. In the course of that appeal – which has not been heard at the date of this notice – the Commissioner reconsidered her position and accepted that section 36(2) is not engaged in respect of any of the information covered by FS50774281, and section 43(2) is not engaged in respect of some of that information.

10. In its submission in the current case, which concerns the email attachments, the Trust advised the Commissioner that, in correspondence dated 16 December 2019, it had confirmed to the complainant that it was no longer relying on sections 36 and 43 in respect of the emails originally requested.

Request and response

11. On 22 August 2019 the Trust provided a further response to the request of 4 April 2018, in respect of the email attachments covered by that request. The Trust refused to comply with that element under section 12(1) and section 14(1) of the FOIA. The Trust said it also considered that the exemptions under section 36(2), section 40(2), section 41, section 42(1) and section 43(2) of the FOIA would also apply to information within the email attachments.

12. Following an internal review, the Trust wrote to the complainant on 30 December 2019. The review discussed the Trust's reliance on sections 12(1) and 14(1) only. It upheld its original position in respect of those exemptions. The Trust noted in its discussion of section 14(1) that it had revised its position regarding the section 36 and 43 exemptions. The Commissioner understands that this is in relation to the emails originally requested.

Scope of the case

13. The complainant contacted the Commissioner on 19 November 2019 to complain about the way this aspect of her request for information had been handled.

14. In its submission to the Commissioner, the Trust confirmed that it is no longer relying on section 36 or 43 in relation to the emails it withheld originally. The Trust said it continues to rely on sections 40 and 42 in respect of the emails and notes that its reliance on section 42 is being considered by the FTT. (The Trust has not referred to its reliance on section 41.)

15. This case concerns the email attachments and the Trust has confirmed to the Commissioner that it has not, at this point, considered the application of any Part II exemptions in respect of the attachments. The Commissioner's investigation has therefore focussed solely on the Trust's reliance on section 12(1) and/or section 14(1) of the FOIA.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

16. Section 12(1) says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so.

17. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Trust. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- determine whether it holds the information
- locate the information, or a document which may contain the information
- retrieve the information, or a document which may contain the information, and
- extract the information from a document containing it.

18. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

19. In its submission to the Commissioner, the Trust says that it considers that the scope of the [4 April 2018] request was very broad in nature. It says it spent significant time and effort locating the emails which fell within scope (and were subject to the FS50774281 decision). The Trust says that it has identified, in retrospect, that it had spent between 26 and 28 hours of time on that matter, locating the information falling within the scope of the request. The Trust considers that it would have been entitled to refuse to comply with the request at the outset, had it taken into account the amount of work required to locate the emails and attachments within the scope of the request.

20. The Trust has advised the Commissioner that it is complex to set out how long each stage in locating the information within scope of the request would have taken. This is because the matter of the request has been ongoing for more than two years. However, the Trust says it appreciates that in order to rely on section 12, it must be able to demonstrate that its application is reasonable, and it should provide evidence of how the time estimate has been calculated.

21. In relation to how it managed the initial request [in 2018], the Trust says it took the following steps and it has set out calculations of the time spent where possible:

    - On receipt of the initial request, discussion was needed with senior colleagues to identify how best to source the documents within the scope of the request and where they would be held. On the basis that the request sought "*all other information in relation to the trust's exploration of the creation of a wholly owned subsidiary property service company*", the Trust had to identify where the information would be held and the most efficient way in which to source that information and then an email search was required. **Estimated time spent – 1 hour**

    - There were more than 300 emails identified and these were printed out and reviewed to put in date order and remove duplications as far as possible. They were reviewed at the same time to confirm that they were in scope of the request. On average, email trails were two pages long, which required almost 700 pages to be reviewed. They then had to be collated and scanned. It did not take significant time to review each email and the Trust estimated that the majority would have taken around one minute to review. Some may have taken slightly longer. Based on an estimated 1-2 minutes per document this took in the region of six to eight hours to complete. **Estimated time spent – 6 to 8 hours**

    - The Trust undertook a search for reports and minutes relevant to the establishment of the property services company. This required a review of the records of the Trust Board, Group Finance and Investment Committee and Group Executive Committee. It was then necessary to extract and save any documents within the scope of the request. **Estimated time spent – 1 hour**

22. The Trust says it considers that in dealing with the original request, it spent approximately eight to 10 hours locating and extracting relevant information. These calculations are based on the work being carried out by different individuals at the Trust, at different stages.

23. In relation to the disclosure of the email attachments, the Trust says it began work on extracting the attachments attached to the emails considered as part of the initial request as part of the internal review process. It says it is important to note that these had not been considered separately up to that point. The attachments had to be extracted from each individual email. The Trust identified that there were 230 individual documents which would need to be individually reviewed to ensure they were relevant to the request. Given the way in which the documentation is held, it was not possible to speed up the process and each document had to be individually extracted and reviewed to determine whether it fell within the scope of the original request.

24. The Trust began drafting a schedule summarising the content of each document as part of responding to the request. The Trust says the staff member who carried out the task has estimated that they spent approximately 18 hours on the process of: identifying which of the more than 300 emails had attachments; extracting attachments; reviewing them to determine whether they fell within the scope of the request; collating them to exclude duplications where possible; and indexing them.

25. The Trust goes on to say that whilst those emails which did not have attachments were quick to exclude, where an email did have an attachment it took on average five minutes to: extract the attachment; save and rename it; review it for relevance; and then identify whether it was a duplicate. Five minutes spent on each of the more than 200 attachments represents just over 19 hours which corresponds to the staff member's estimate that they spent 18 hours on that task.

26. The Trust has told the Commissioner that it has therefore now realised that combining the initial time it spent on the original response in 2018 with the time spent reviewing the attachments means that complying with the request has exceeded 18 hours. Based on the FTT's 2006 decision in *Quinn v Information Commissioner and the Home Office* (EA/2006/0010), the Trust considers it was entitled to refuse to comply with the request at the point the information had not been located within the 18 hours. It says that the fact that the Trust considered it might have been possible to comply with the request before starting the review of attachments does not preclude it from now relying on section 12.

27. Taking account of the time it took to respond to the original request in 2018, the Trust considers that it has exceeded the 18 hour limit, based on the original eight to 10 hours, followed by the further 18 hours it has spent extracting the attachments. In the Trust's view this has therefore taken it over the appropriate limit of 18 hours and that it is entitled to

refuse to comply with the request for attachments under section 12 of the FOIA.

Conclusion

28. The Trust says that [in 2018] it had spent eight to 10 hours locating, reviewing and extracting information that fell within scope of the request. More than 300 emails were identified during that process.

29. The Trust's 2018 response to the request covered the emails it had identified but the Trust had not considered the attachments to those emails. In her subsequent decision, the Commissioner instructed it to do so.

30. The Trust has now found that there are over 200 documents attached to the emails covered by the request and it has provided the Commissioner with copies of those documents. The Trust's submission is not entirely clear. It initially seems to have suggested that, at this point, it has simply extracted these documents from the emails. However, it has also gone on to indicate that it has reviewed, collated and indexed those attachments.

31. The Trust has told the Commissioner that a member of its staff has estimated that it has taken them approximately 18 hours to: identify which of the more than 300 emails had attachments; extract the attachment documents; review the attachments to determine whether they fell within the scope of the request; collate them to exclude duplications; and to index them. The Trust has estimated that it has taken approximately five minutes to carry out this process for each attachment document.

32. The Commissioner notes that, at five minutes per document, it would take approximately 16.5 hours to extract, review, collate and index each of the 230 attachment documents. The Commissioner understands that the Trust's position is that it therefore took 1.5 hours to identify which of the 300+ emails had attachments.

33. The Commissioner also notes that the Trust also said in its submission that it had spent between 26 and 28 hours *"...locating the information falling within the scope of the request*." She understands this to refer to the eight to 10 hours it spent responding to the request in 2018 combined with the 18 hours it has spent dealing with the attachments.

34. The Trust's response to the original request of 4 April 2018 has been split into two parts: it provided its first response in 2018 and the second response in 2019. The Trust did not rely on section 12 with regard to its initial response because it had not taken account of the email attachments and was able to provide a response within the 18 hour

limit. However, taking account of the attachments, the Trust has found that, when combined with the time it spent on its first response, complying with the request fully – ie including the attachments - would exceed the time limit. This is because it would have taken 26 to 28 hours to comply fully with the request. The Trust says that if it had taken account of the attachments at the time of its first response it would have relied on section 12 at that point.

35. The issues here are: first, whether, in the circumstances of this request, the Trust can claim a late reliance on section 12; second, if it can, whether it is entitled to claim the cost exemption and third, if it is, is the Trust entitled to claim the cost exemption when it has already gathered together the information in question.

36. First, the late reliance on section 12. The Commissioner has referred to the 2015 Upper Tribunal (UT) decision in Laura McInerney v IC and Department for Education GIA/4267/2014. The Commissioner's original decision, associated with the UT decision, had considered DfE's reliance on section 36. On appeal before the FTT DfE had sought additionally to rely on sections 43, 12 and 14 The issue it was then necessary for the UT to consider was whether a public authority may rely for the first time before the FTT on provisions of the FOIA, other than the exemptions in Part II; specifically section 12 and section 14 in the DfE case under consideration.

37. The UT's judgement in GIA/4267/2014 provided binding authority for the position that public authorities have the right to make late claims of section 12 (and section 14) for the first time before the Commissioner or the FTT.

38. In the current case, the Trust has made a claim of section 12 in its further response to the complainant in 2019. It is a 'late' claim because the Trust had complied with aspects of the request originally, in 2018. This case is somewhat similar to the case in FS50732853. In that case the public authority had released some information and withheld other information under Part II exemptions. During the Commissioner's investigation the authority had relied on section 12 with regard to additional information relevant to the request that it was found to hold.

39. In the current case, having not relied on it originally, the Trust considers that section 12 is now engaged in respect of the time taken to comply with the entire request now that it has included the attachments.

40. In line with both FS50732853 and the UT's decision in GIA/4267/2014, the Commissioner finds that the Trust has a right to make a late claim of section 12(1).

41. Second, is the Trust entitled to rely on section 12(1)? The authority in FS50732853 had estimated that to provide a response in respect of the additional information alone would take more than 18 hours. In the current case, the Trust has estimated that it would take 18 hours to comply with the request for the attachments. This is not more than 18 hours and so, unlike the above authority, the Trust cannot rely on section 12(1) with regard to the attachments alone.

42. Is the Trust entitled, at this point, to combine the length of time it has spent on the attachments with the length of time it spent complying with the remainder of the request in 2018? In total this is between 26 and 28 hours.

43. If, at the point of its internal review of its 2018 response, and having spent 10 hours that response, the Trust had identified that the email attachments were within scope of the request and that complying with that aspect would push complying with the entire request over the time limit, the Trust would have been able to claim section 12(1) at that point. The Trust did not rely on a claim of section 12(1) at the point of its original internal review. However, the Trust was instructed to reconsider the original request again – eight months after its internal review. In the Commissioner's view, the Trust was nonetheless entitled, at that later point, to combine the time spent complying with attachments with the time spent complying with the original request. The time the Trust has estimated that it would take to comply with the entire request is between 26 and 28 hours ie more than 18 hours.

44. Is this time estimate reasonable? The Trust has explained how it derived the 8 to 10 hours for the request originally. Given the volume of material covered by the request, the Commissioner considers this estimate is credible. The Trust has also explained that someone has carried out work to identify, extract, review, collate and index the email attachments. That person has said it took 18 hours to complete this work and, in the circumstance, the Commissioner must accept that that figure is broadly correct. She therefore accepts that the Trust has spent at least 26 hours on complying with the request.

45. Finally, the Commissioner must decide if the Trust is entitled to claim the cost exemption when it has already gathered together the information in question. The Commissioner has considered, above, whether the time that the Trust has estimated it has taken to comply with the entire request is credible. Ordinarily, when she considers a time estimate is credible, the Commissioner would find that an authority is entitled to rely on section 12(1) and is not obliged to comply with the request. However, as has been discussed, the Trust has already identified, extracted, reviewed, collated and indexed the documents that were attached to the emails that the complainant requested and that are

relevant to the request. As noted, the Trust has provided the Commissioner with copies of these 230 documents.

46. The Trust has referred to the FTT decision EA/2006/0010. The FTT advised here that a public authority can still rely on section 12 even when the authority has made the decision to try to comply with the request and has already embarked on a search for the requested information.

47. However, the Commissioner has referred to the UT decision in APG v IC and Ministry of Defence GIA/150-152/2011. In that decision, at paragraph 47(ii), the UT notes:

> *"The cost exemption only has meaning if the point is taken early on in the process, before substantial costs are incurred in searching for or collating the information. It relates to an estimate of whether future events "**would exceed**" the limit and not whether past ones have. Thus, if material has been gathered together for some purpose including analysis for substantive exemptions such as international relations, it is no longer open to the authority to claim it."*

48. In the current case, the Trust has gone further than simply embarking on a search for the requested information. It has searched for, extracted, reviewed, collated and indexed all the documents attached to the emails falling within the scope of the request. The Trust could have undertaken a sample exercise and extrapolated a time estimate from this, but it has completed the entire exercise.

49. As the UT has noted, section 12 relates to an estimate of whether future events "would exceed" the limit and not whether past ones have. The Trust has ended up gathering all the material together for a purpose, the purpose being to see whether gathering it all together would exceed the cost limit.

50. In view of the UT's decision above, the Commissioner must find that, in the circumstances, it is not open to the Trust to now claim the cost exemption under section 12(1) with regard to the requested attachments. This is because it has already identified, extracted, reviewed and collated all the attachments covered by the request. The Commissioner has therefore concluded that section 12(1) of the FOIA is not engaged in respect of the attachments.

51. The Trust is also relying on section 14(1) with regards to the attachments and the Commissioner has gone on to consider whether this exemption is engaged. She notes the above UT decision in GIA/4267/2014; that section public authorities have the right to make a late claim of section 14(1).

Section 14(1) – vexatious requests

52. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.

53. 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

54. 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.

55. 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 on it and balance this against the purpose and value of the request.

56. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

57. In its submission to the Commissioner, the Trust has told her that it has carefully considered her published guidance on the application of section 14. It says that, as it had set out in its internal review, it does not consider the request is vexatious and appreciates that the complainant's desire for the information is genuine. However, the Trust says it considers that it has already spent significant time and cost on locating the information. In the Trust's view, to now consider the attachments with a view to disclosing them would represent a disproportionate "effect" on the its resources and is therefore unjustifiably burdensome.

58. In considering the Commissioner's guidance, the Trust says it has taken into account whether section 14(1) could be applicable in the event that

the Commissioner concludes that section 12 is not. The Trust says that as it had set out in its internal review, over two working weeks have been expended to date dealing with this matter. The complainant has requested a significant volume of information which would need to be reviewed carefully to assess whether it could be exempt. The Trust says it relied on a number of exemptions in dealing with the request originally and that it would need to consider whether these exemptions would still apply to the attachments. Finally, the Trust says it would potentially need to engage with a number of third parties in relation to disclosing the email attachments.

59. The Commissioner has reviewed the Trust's correspondence with the complainant about its reliance on section 14(1). She notes that in that correspondence the Trust advises the following:

- The public rightfully has an interest in how the Trust delivers services and makes use of public funds, particularly where innovative service delivery is being explored and utilised and in light of funding constraints in delivering healthcare.
- It has already expended substantial resources in dealing with the request and has maintained a genuine desire to resolve it to the complainant's satisfaction.
- The Trust had already spent 15 working days working on the request. Dealing with the attachments would take another 15 working days, at least.
- The Trust will need to review the content of each of attached documents, to consider any exemptions that apply to that content, and then make appropriate redactions.
- The Trust would need input from RFL Property Services, and from other areas of the Trust (such as in Finance), which would divert senior staff from their core duties.
- Carrying out further work on the request and the email attachments would impose a grossly oppressive burden on the Trust.
- That the exemptions the Trust applied to the emails would also apply to information within the email attachments. (The Trust subsequently withdrew its reliance on sections 36 and 43 in respect of the emails.)
- The Trust had tried to engage with the complainant with a view to narrowing the scope of her request, but the complainant refused to agree with this.

Conclusion

60. The Commissioner has discussed how the Trust has already identified, extracted and reviewed the email attachments that fall within scope of the original request. These comprise 230 documents of various kinds in various formats: Word documents, Excel spreadsheets, presentations and pdf files. The documents all have meaningful names, from which their content will be clear. The work remaining before any attachments are disclosed would therefore seem to be to redact any information that the Trust considers is exempt from closure. Section 12(1) does not cover the time it would take to redact information, but this process can be considered under section 14(1). There may be instances when the time it would take to redact information would be a so oppressively burdensome to a public authority that it would make a request a vexatious request.

61. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public 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 Commissioner; and
- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

62. However, the Commissioner must also take account of the public interest of the information being requested. On that matter, she notes the UT's decision in GIA/2782/2017. The UT noted that a compelling public interest in information's disclosure does not automatically 'trump' any consideration of the resource burden involved in complying with that request, such that the request cannot under any circumstances be regarded as vexatious. All the circumstances of each request need to be considered.

63. The 230 documents in this case can correctly be described as a substantial volume of information. The Trust considers that some of the information contained in the documents would be exempt from disclosure. Having reviewed a random sample of the material, the Commissioner accepts that exempt information (such as personal data) is likely to be scattered throughout the documents and that isolating such information is unlikely to be straightforward. Based on the three criteria above, the Trust would seem, therefore, to have a viable case.

64. The Commissioner notes that any burden caused to the Trust by complying with the request for the attachments would result from its handling of the original request. Had it more carefully considered the request when it first received it in 2018, and included consideration of the email attachments, the Trust could conceivably have relied on section 12(1) at that point, as it itself has noted. Whilst noting the Trust's final internal review point above, the complainant *may* have been prepared to submit a refined request which the Trust could have complied with within the cost limit. The resulting burden to the Trust of complying with a refined request may have been reasonable and proportionate.

65. Alternatively, if the complainant had refused to submit a refined request the matter could have come to the Commissioner at that point.

66. However, the situation now is that there are 230 documents to be considered, which the Trust says would need to be reviewed and redacted where appropriate. The Trust has said it would take 15 working days to deal with the attachments. The Commissioner understands the Trust to be referring to the redaction work at this point. She therefore understands that the Trust considers it would take approximately 30 minutes to review and redact each of the 230 documents, where appropriate.

67. The Trust is no longer relying on section 36 or section 43 with regard to the emails to which the documents were attached. (It appears to be relying still on section 40 and section 42 with regard to the emails – its position regarding section 41 is not clear.) In her submission to the Commissioner, the complainant has said that this would therefore substantially reduce the extent of the redaction work. In the Commissioner's view, just because the Trust is no longer relying on sections 36 and 43 with regard to the emails, it does not follow that the documents attached to those emails do not engage either or both of those exemptions. That is something the Trust would still need to consider.

68. Having reviewed a sample of the documents the Commissioner does not consider the Trust's estimate to be an unreasonable estimate. Even if it took 15 minutes – on average - to review and redact each document, that would still generate a total time of 57.5 hours ie approximately one and a half working weeks to review and redact the attachment documents. The Commissioner makes the observation that this is approximately three times the length of time that is considered 'appropriate' for compliance, under section 12(1) of the FOIA.

69. The Commissioner is tasked with balancing the above burden to the Trust against the value of the requested information. As noted above, disclosing requested information that would have significant public benefit does not necessarily mean that the request for it cannot be categorised as vexatious because of the burden of complying with it.

70. Trust has acknowledged that the request is not without value and that the matter behind the request - innovative service delivery and the use of public funds - has a public interest.

71. The complainant, who describes herself as a "health activist" considers that creating wholly owned subsidiary companies is a matter of both local and national concern and is of significant public interest. From the complainant's discussion in her submission, the Commissioner understands that a concern for many about subsidiary (private) companies and the NHS, which the complainant appears to share, is a perception that the NHS is being 'privatised' by stealth, which then generates a number of associated concerns. The complainant considers that the Trust is facing pressures that are leading it to consider using 'non-NHS' providers to provide particular services and that there is a public interest in that matter.

72. The Trust disclosed information the complainant had requested when it first handled the request in 2018. Having withheld other information, it has subsequently withdrawn its reliance on certain exemptions and, the Commissioner understands, has either disclosed further relevant information, or intends to. The Commissioner agrees that the matter of who delivers NHS services is of considerable public interest. However, to a satisfactory degree, the Commissioner considers that the public interest in the matter behind the request is satisfied through those disclosures. Having given the matter considerable thought, the Commissioner is not persuaded that disclosure of the attachments has sufficient public benefit to outweigh the burden caused to the Trust by reviewing and redacting the 230 documents so that they can be disclosed. That process has been estimated to be likely to take between one and a half and three full working weeks. The Commissioner finds that this would be a disproportionate and oppressive burden for the Trust and that therefore the request for the attachments can be categorised as vexatious under section 14(1) of the FOIA.

73. The complainant has the option of submitting a new request to the Trust for specific attachment documents, or specific types of those documents. The Trust has now disclosed, or intends to disclose, many of the emails she requested; the content of these is likely to indicate the nature of any documents attached to them.

Right of appeal

74. 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@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

75. 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.

76. 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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