

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2021

Public Authority: Dr Sarah Hawxwell
(Partner of Penrose Surgery)

Address: 33 Penrose Street
London
SE17 3DW

Decision (including any steps ordered)

1. The complainant requested information relating to a hearing aid loop. The partners of Penrose Surgery ("the Surgery") initially denied holding information within the scope of the request but later refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and therefore the Surgery was entitled to rely on section 14(1) of the FOIA to refuse it. However, he also finds that the Surgery failed to issue its refusal notice within 20 working days and therefore breached section 17(5) of the FOIA.
3. The Commissioner does not require any further steps.

Status of GPs under FOIA

4. The Commissioner notes that Penrose Surgery 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 a person makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether they hold information and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to "the

Surgery" where appropriate in detailing the correspondence and analysis that has taken place – although in this case, the Surgery only has one GP partner.

Request and response

5. On 23 February 2021, quoting a previous letter he had received from the Surgery, the complainant requested information of the following description:

"The most recent analysis by our reception team indicates that additional loops have so far not been necessary however we are keeping the need for a second loop under constant review'

"I therefore request a full comprehensive detailed hard copy of of [sic] the report of all your reception analysis. This should including the method used to establish how this feasibility study with achieved [sic]

"I feel there should be public consultation with patients, and you should be writing to patients (questionnaires) There should be patient feedback

"I also request copies of patient feedback completed questionnaires with any patient personal details removed.

"In addition I should ask you conduct a feasibility study into other needs for your disabled patients or do you just for patients with hearing disabilities."

6. On 27 April 2021, the Surgery responded. It did not address the FOI element and stated instead that it would not be carrying out a survey.
7. The complainant requested an internal review on 6 May 2021. He pointed out that he had not asked the Surgery to carry out a new survey in respect of the hearing loop, but to provide him with the results of the one it had indicated it had already carried out.
8. The Surgery sent the outcome of its internal review on 2 June 2021. It stated that it held no information within the scope of the request.

Scope of the case

9. The complainant first contacted the Commissioner on 27 March 2021 to complain about the way his request for information had been handled. At that point the Commissioner's intervention was necessary to get the Surgery to respond to the request. Once the response had been provided, the Commissioner had to intervene once again to get the Surgery to complete an internal review.
10. When the Surgery had completed its internal review, the complainant contacted the Commissioner on 2 June 2021 as he considered that further information was held.
11. The Commissioner commenced his investigation on 13 September 2021 with a letter to the Surgery asking it to set out why it did not consider it held any relevant information.
12. The Surgery responded to the Commissioner's questions, but informed him that it had serious concerns about the complainant's behaviour and the connection between that behaviour and the request. The Commissioner advised the Surgery that it was entitled to refuse the request as vexatious, but that it would need to explain why the request was vexatious and would need to issue an appropriate refusal notice to the complainant.
13. The Surgery issued a fresh refusal notice on 15 November 2021 and relied on section 14(1) of the FOIA to refuse the request as vexatious.
14. As a public authority is not obliged to confirm or deny holding any information within the scope of a vexatious request, the Commissioner has looked at whether or not the request was vexatious.

Reasons for decision

Section 14 - Vexatious

15. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

16. Section 14 of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

17. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
18. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (paragraph 45).
20. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
21. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: “*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*”.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

22. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
23. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

The complainant's position

24. The complainant appeared to accept that he did not enjoy a good relationship with the Surgery. However, his submission argued that this had been principally due to the Surgery's actions and not his own.
25. He argued that the Surgery had refused his request for a Reasonable Adjustment and indicated that his request had been aimed at understanding what consideration (if any) the Surgery had given to its patients with hearing problems.
26. The complainant also noted that he considered that the Surgery had unlawfully shared special category personal data about him with the Parliamentary and Health Services Ombudsman. Finally he considered that the way that the Surgery had behaved towards him was vexatious – particularly in the way it had attempted to avoid responding to his request.

The Surgery's position

27. The Surgery argued that this request was merely the latest chapter of a long-running battle between itself and the complainant.
28. The Surgery indicated that the complainant has a long-standing grudge with the NHS as an institution, but it was unwilling to supply details because these related to the complainant's medical history. However it considered that the complainant's actions bordered on harassment.
29. What the Surgery did provide though was evidence that the complainant has been removed from the patient list by at least two other GP surgeries in the last five years. The Surgery argued that even more practices had experienced issues, but were scared to provide evidence for fear of re-igniting previous disputes with the complainant.
30. The Surgery provided the Commissioner with a schedule of emails its managing partner had received from the complainant. Between 1 January 2021 and 30 August 2021, that individual had received a total of 115 emails from the complainant, which the Surgery argued was excessive.

31. In addition, the Surgery noted that a number of the emails had been offensive and demeaning to staff. It cited one particular email that the complainant had sent relating to the Surgery's procedures for collecting urine samples from patients during the pandemic. In order to reduce the risk to reception staff, patients were asked to leave specimen samples on a table near to the reception. The Surgery had received correspondence from the complainant in which it says he accused the Surgery of "promoting sex offenders."
32. In relation to the hearing aid loop, the Surgery said that the complainant had taken an entrenched position which he was unwilling to shift from, despite the Surgery having explained its position and that any attempts to bring the matter to a close had been unsuccessful.
33. The Surgery explained that the complainant had a habit of copying his correspondence to various regulators, the police and a local Member of Parliament – implying that the Surgery was in breach of its legal or regulatory obligations. It argued that he was weaponizing tools like information requests in order to create a burden upon the Surgery.
34. In addition, the Surgery noted that it believed the complainant was leaving fake online reviews of the Surgery, denigrating its performance. It noted that the names under which these reviews had been posted were often very similar to, or foreign language translations of, the complainant's name.
35. The complainant was, the Surgery considered, using his rights of access to information as a means of exerting pressure and of getting his own way.
36. In summary, the Surgery felt that responding to the request would require a disproportionate effort because:

"in almost every case the matter being pursued by the requester is always of a trivial nature that does not affect his healthcare but he is nitpicking on minor administrative procedures in order to cause deliberate annoyance and so the surgery would have to expend a disproportionate amount of resources in order to meet his requests."

The Commissioner's view

37. In the Commissioner's view, the Surgery has just done enough to demonstrate that the request was vexatious.
38. Much of the evidence the Surgery provided post-dated the request. Whilst some of that evidence was created prior to the Surgery completing its internal review, given that the Commissioner's

intervention was required to get the Surgery to complete that review, he does not consider it fair to the complainant to ascribe significant weight to events that, had the Surgery responded promptly, would have occurred after the internal review was complete.

39. When considering events that occur after a request is submitted, the Commissioner is in any case required to give limited weight to such events – except inasmuch as they demonstrate that behaviour, that had already been exhibited prior to the request, continued after it or continues today.
40. The Commissioner does not consider that he has been presented with sufficient evidence to demonstrate an ongoing campaign of harassment – certainly not one that was already ongoing at the time of the request. The Commissioner is not saying that such a campaign did not happen – only that he has not been presented with sufficient information.
41. In addition, the Commissioner can give very little weight to the “sex offenders” comparison.
42. Firstly, this remark was made after the Surgery completed its internal review and so could not have informed the original decision. Secondly, having been provided with the full text of the email, the Commissioner does not consider that the Surgery’s interpretation fits the context.
43. The email in question records the complainant’s concerns about the Surgery’s practice of asking patients to place samples on a table in the waiting area, so that they can later be collected by staff without the need for close person-to-person contact. The complainant argued that this practice allowed for the samples to be stolen or for patients’ personal data to be leaked. He then added that:

“The other concerning issues is our addresses, this could useful criminals including a sex offender's” [sic]
44. Whilst the Commissioner does not consider that it was advisable to raise such an emotionally-charged subject in this context, he notes that, although perhaps the complainant’s approach was somewhat inflexible, given the circumstances of the pandemic, the underlying issues raised are not wholly unfounded. Furthermore, whilst the Surgery has argued that this was the latest in a series of “nitpicking” issues, it only provided evidence of the one incident.
45. However, the evidence the Commissioner has been presented with does demonstrate that the volume of correspondence from the complainant is significant.

46. Whilst most of the schedule of correspondence provided by the Surgery post-dates the request, the Commissioner also notes that the schedule as a whole demonstrates a significant volume of correspondence both prior to and after the request was submitted.
47. The request was submitted on 23 February 2021 and that was the 22nd piece of correspondence the complainant had sent that year to the managing partner alone. The Surgery noted that the complainant would also regularly send emails to other members of staff and, because of his habit of copying numerous third parties into his correspondence, any replies from those parties would sometimes be copied to the Surgery as well.
48. The Commissioner has made allowances for the fact that the complainant has explained that he has a medical condition that can sometimes prevent him from processing his thoughts properly (which can lead to multiple emails on the same topic). The Commissioner has also made allowances for the fact that the complainant is a patient and will therefore need to be in regular contact with the Surgery – although the Commissioner is sceptical that the complainant would need to contact the managing partner (who is not a GP) routinely about such matters.
49. Nevertheless, the volume of correspondence remains substantial. It would represent a burden for a public authority of any size, but the Commissioner notes that this appears to be a relatively small surgery with just a single GP as a partner. The amount of staff available to deal with this level of correspondence means that there would be an unreasonable diversion of resources away from patient care – which the Surgery can ill-afford at the best of times and certainly not during a pandemic. The evidence suggests that this pattern of behaviour was evident in the complainant's engagement with other GP surgeries.
50. The complainant's practice of copying in multiple other organisations (and the Commissioner notes that a great deal of the correspondence, to his office, from the complainant has also been copied to the commissioner of the Metropolitan Police – who has not demonstrated any personal interest in the complaint) is, in the Commissioner's view, a way of exerting pressure on the Surgery to comply with the complainant's wishes.
51. Turning to the issue of the "fake" reviews, the Commissioner notes that the two examples the Surgery provided both post-date the request and one post-dates the internal review. The Commissioner considers it likely that both these reviews were submitted by the complainant given the similarity in the names and the similarity between the posts and information the complainant has provided, about himself, to the

Commissioner. The Commissioner also notes that, when the Surgery challenged the complainant, arguing that the posts were libellous, he only disputed whether or not the posts were libellous (which he would be unlikely to know if he had not witnessed the events described) and not that he had not written them under a fake name.

52. The complainant has made some reasonable points about the way the Surgery handled both his personal data and his request. Whilst they are reasonable, they are also irrelevant to the question of vexatiousness.
53. Whilst the Commissioner will address the poor procedural handling of this request below, a public authority's procedural handling of a request does not make that request any more or any less vexatious – what matters is the circumstances that prevailed at the time of the request.
54. Regarding the use of personal data, the Commissioner has addressed this matter as part of a data protection complaint and need not return to his findings on that matter here. However, the Commissioner notes that the request in question does not relate to the Surgery's handling of personal data and he sees no reason why Surgery's handling of the complainant's personal data should have motivated the complainant to make such a request – or why it would increase the value in the Surgery responding to such a request.
55. The Commissioner recognises that there is a value to the information in question and that there would be some public interest in understanding the Surgery's position as regards catering for patients with hearing difficulties. However, as the Court of Appeal commented during the *Dransfield* litigation, the value of the information requested cannot be the "trump card" that requires a public authority to comply with a request that would otherwise be vexatious. The request must be considered in context.
56. In this case, the Commissioner considers it unlikely that any response the Surgery provided would have been sufficient to satisfy the complainant and, more probably, it would merely have increased what was already a disproportionate burden of correspondence upon the Surgery.
57. The Commissioner considers that this request, when set in context, was vexatious and therefore the Surgery was entitled to rely on section 14(1) of the FOIA to refuse it.

Procedural matters

58. Section 17(5) of the FOIA requires a public authority wishing to refuse a request as vexatious to issue a refusal notice within 20 working days of receiving that request.

59. In this case, the Surgery failed to respond to the request at all within 20 working days, only did so when the Commissioner became involved and did not refuse the request as vexatious until some nine months after first receiving the request.
60. The Commissioner therefore finds that Surgery breached section 17(5) of the FOIA in responding to this request.

Right of appeal

61. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

62. 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.
63. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF