

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2022

Public Authority: West London NHS Trust
Address: 1 Armstrong Way
Southall
UB2 4SD

Decision (including any steps ordered)

1. The complainant made 11 requests over the course of six months. West London NHS Trust ("the Trust") eventually refused all 11 requests as vexatious.
2. The Commissioner's decision is that the Trust has failed to provide any evidence to support its use of section 14(1) of FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue fresh responses, to all 11 requests identified in the annex to this notice, that do not rely on section 14(1) of FOIA.
4. The Trust must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. Between 11 March 2021 and 14 September 2021, the complainant made a total of 11 requests for information to the Trust. These are set out in the annex to this notice.
6. The Trust refused all of these requests as vexatious – either when it first responded or following an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 1 October 2021 to complain about the way his request for information had been handled.
8. On 13 June 2022, the Commissioner wrote to the Trust, noting that he would be dealing with all 11 requests together and asking it to provide a submission, setting out why each request was vexatious. The Commissioner pointed out that it was the Trust's responsibility to demonstrate why the requests were vexatious and he warned that, in the event that the Trust did not provide an adequate submission, he reserved his right to issue a decision notice finding that the exemption was not engaged. The correspondence was sent to the email address published on the Trust's website.
9. On 12 July 2022, after the Trust had failed to respond to (or even acknowledge) his investigation letter, the Commissioner wrote to the Trust again. He noted that the submission was delayed and asked the Trust to respond within the next seven days. He also warned again that, in the event the Trust did not provide a submission, he might find that the exemption did not apply.
10. Having still not received a response, the Commissioner attempted to call the Trust on 19 July 2022, but was unable to get through to anyone able to deal with the matter.
11. The Commissioner considers that it would be unfair to the complainant to wait any longer for the Trust's submission – especially given the Trust's complete lack of engagement. He has therefore decided to deal with this case on the basis of the information available to him.
12. The scope of this investigation is to determine whether any or all of the requests were vexatious.

Reasons for decision

Section 14 - Vexatious

13. 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.

14. 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.

15. A public authority relying on this exemption is not required to communicate any information nor even establish whether any relevant information is held. It thus follows that the threshold for finding that a request is vexatious must be a high one and should be appropriately supported by evidence.

16. It is disappointing in this case that the Trust did not take up the opportunity to provide a submission. Both parties have made serious claims about the other's behaviour and the Commissioner would have preferred to have tested those claims against the available evidence. Had he been able to do so, it is entirely possible that he would have reached a different decision.

17. The Commissioner does not consider that eleven requests submitted over a six month period is necessarily excessive. Whilst some requests were clustered together, the Commissioner notes that, in other cases, the Trust created extra work for itself by treating requests for internal reviews as being fresh requests.

18. However, it was for the Trust to demonstrate why the frequency of the requests was likely to cause disruption. As it has conspicuously failed to do so, the Commissioner does not consider that the Trust has demonstrated that any of the requests was vexatious.

19. The Trust was therefore not entitled to rely on section 14 to refuse any of the requests.

Right of appeal

20. 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

21. 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.
22. 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
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