

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2022

Public Authority: Cambridgeshire and Peterborough NHS
Foundation Trust

Address: Elizabeth House
Fulbourn Hospital
Fulbourn
Cambridge
CB21 5EF

Decision (including any steps ordered)

1. The complainant has requested correspondence to and from the Cambridgeshire and Peterborough NHS Foundation Trust ("the CPFT") relating to the Spectrum 10K research project. The CPFT originally refused the request on the grounds of cost (under section 12), but later clarified that it was instead refusing the request on the grounds that compliance would impose a grossly oppressive burden (under section 14(1) of FOIA).
2. The Commissioner's decision is that:
 - The request is vexatious and therefore the CPFT was entitled to rely upon section 14(1) to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 21 October 2021, the complainant made the following request for information to the CPFT:

"Under the Freedom of Information Act 2000, I would like to request:

A copy of all correspondence between the Spectrum 10K research project and the Cambridgeshire and Peterborough NHS Foundation Trust".

5. On 4 November 2021, the CPFT responded and said the request was being refused under Section 12 on the grounds of costs.
6. On 5 November 2021, the complainant wrote back to the CPFT asking for an internal review of the refusal and submitted a more refined request, on their own accord, in the following words:-

"Should there be other correspondence which does not concern [REDACTED] or [REDACTED], then I am willing for these to be disregarded to allow for my request to be refined to meet the cost limit"."

7. Following an internal review, the CPFT wrote to the complainant on 6 January 2022, upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 7 January 2022 to complain about the way their request for information had been handled and specifically the use of section 12 to refuse their request.
9. The Commissioner wrote to the CPFT on 8 July 2022 asking for further information on how the decision to refuse the refined request under section 12 was decided.
10. The CPFT wrote back to the Commissioner on 3 August 2022 advising that section 12 was used in error and that they are relying on section 14 to refuse the refined request due to the burden it would place on the FOI team. The burden was specifically due to how long it would take to review emails for redactions of exempt information.
11. The Commissioner wrote to the CPFT on 11 August 2022 asking for further information on how the decision to refuse the refined request under section 14 was decided.
12. The CPFT wrote back to the Commissioner on 24 August 2022, explaining that it had carried out a sampling exercise and, from that, determined the request was vexatious. It also provided the emails that were involved within this sampling exercise.

13. This notice covers whether the CPFT correctly determined that the refined request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

14. The Commissioner considers that a request can be vexatious for two reasons: firstly if the request is patently unreasonable and secondly where compliance with the request would incur a grossly oppressive burden on the public authority in terms of the costs or the diversion of resources. In this case, the CPFT has relied upon the latter.
15. Section 14(1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
17. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority.
18. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013).
19. The term 'vexatious' is not defined in FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
20. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.
21. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed 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).
22. 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 on it and balance this against the purpose and value of the request.
23. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The CPFT’s view

24. The Commissioner wrote to the CPFT to ask it to provide justifications and explanations for its application of section 14(1) of FOIA to this request.
25. The CPFT referred the Commissioner, in their correspondence of 24 August 2022, to the refined request.
26. The CPFT explained that emails between the CPFT and Ms [REDACTED] and/or Mr [REDACTED] were extracted with the following filters applied: 1st June 2019 to present, email and Spectrum 10K. The filter 1st June 2019 was used because this was the date that the study began. Using these filters, 1,824 emails fell within the scope of the complainant’s refined request. It should be noted that ‘Spectrum 10K’ was used in place of ‘autistic and/ or autistic’ because, when the latter terms were used, the number of emails rose considerably.
27. The CPFT also explained that the emails would have to be reviewed individually to consider whether any redactions were necessary. The redactions were specifically of staff names contained in the emails, as well as to determine whether any other information was exempt under

another exemption of FOIA. This latter aspect would be more time-consuming than the former.

28. The CPFT ran a test, calculating the amount of time it took to redact 10 emails identified as part of its sampling exercise. The CPFT specified that there was an email that was particularly long and, therefore, instead of calculating the average time spent on each email, they calculated the time it took to redact a page of emails. They estimated that each page of emails would take 2.8 minutes to review manually and to redact, if necessary. Therefore, reviewing and redacting 1,824 emails would take an estimated 5,150 minutes or 85.80 hours.
29. The CPFT argued that their Freedom of Information Team consists of one individual whose duties encompasses more than just FOIA requests and therefore even the refined request would place a grossly undue burden on the individual and the public authority more widely

The complainant's view

30. The complainant does not believe that the CPFT calculated the amount of time that it would take for them to comply with the request appropriately.
31. In terms of the actual burden that the redaction would place on the CPFT, it is the complainant's view that they should be able to redact the name of the common individuals likely to emerge in the correspondence more swiftly than has been claimed.
32. Although the complainant accepts that section 14 does not require a public interest test, they believe that there is an overwhelming public interest in the Spectrum 10K study because it involves a subject of significant public interest.

The Commissioner's view

33. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
34. The Commissioner has considered the CPFT's position and recognises that the request is significantly wide in its scope.
35. It should be noted that when considering whether a request imposes a grossly oppressive burden on a public authority, the limits in section 12 are a useful guide but, ultimately, the estimate must be considerably higher when considering section 14(1). This is because there is a high threshold for refusing a request on these grounds. The CPFT has

provided the estimate of 85.80 hours to review all 1,824 emails. This was based on an exercise they carried out in which it took them an average of 2.8 minutes to review per page of emails. Even if the estimate were to be halved, this would still represent a significant amount of the CPFT's time and resources to comply with the request.

36. The Commissioner further recognises that, due to the nature of the information and the circumstances in which it is held, the CPFT has real concerns about potentially exempt information, of which a significant part is likely to be the personal data of third parties (triggering section 40(2)), specifically the names and contact details of those who worked on the scheme. Total compliance with the request would therefore require not only all the information to be collated, but for it to be reviewed manually in order to identify the potentially exempt information. The CPFT would then need to undertake the necessary actions to decide whether the cited exemptions are engaged. It is the necessity for manual searches of a significant quantity of emails which leads to this request imposing a disproportionate burden under FOIA.
37. The Commissioner's guidance for section 40(2) explains that information representing the personal data of third parties can only be publicly disclosed under the FOIA subject to the terms of the DPA. Having considered the nature of the information that complainant has sought, the Commissioner is satisfied that this information will require the Council, out of necessity, to consider the application of section 40(2). Further exemptions may also need to be considered. The time spent reading the information within scope of the request and then reaching a judgement about whether an exemption/s apply further adds to the burden of the request.
38. It is also noted that the CPFT Freedom of Information Team consists of only one individual who also holds responsibilities outside the scope of FOIA. Compliance with the refined request would require a substantial amount of time from the single individual in question to both collate and review manually the large volume of documents for redactions.
39. In conclusion, all information requests impose some burden and public authorities have to accept that in order to comply with their FOIA obligations. However, in some cases the burden imposed by a request will be disproportionate to its value.
40. The Commissioner considers that the request has genuine public interest. Nevertheless, in this case the Commissioner recognises that that the refined request would require the CPFT to devote significant public resources to both the collation of the information and the application of exemptions. This would place an undue burden on its limited resources.

41. The Commissioner has therefore concluded that the CPFT is entitled to refuse the request under section 14(1) of FOIA.

Right of appeal

42. 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

43. 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.
44. 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

Michael Lea
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