



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2012/0176 &0177
Appellant: Phillip Riding
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. Just over six years ago Mr Riding had a hernia operation at a Liverpool hospital. Unfortunately he has been in more pain since the operation than he was before. In 2007 he lodged a complaint and there has been the threat of legal action. He and his wife have made contact with the NHS Trust responsible for the hospital many times although there have also been long periods of quiescence. The details are set out at pages 91-95.
2. Mr Riding recalls a young doctor, not his consultant, speaking to him just prior to the anaesthetic taking effect. It is a curious feature of this case that the operation note (pages 55-56) records two names against the entry “surgeon”. One is the consultant, the other name, which follows an oblique stroke is not decipherable. It appears to begin with a P but it might be a B. Everyone is left guessing. Having said that, the details of the operation note are obviously written by the consultant and they are signed by him.
3. On 14 September 2011, in response to a letter from Mrs Riding, the Chief Executive of the Trust wrote her a four page letter answering detailed questions about an information leaflet. There were also questions about the name of the other doctor. The Chief Executive explained that he was unable to identify the name; nor did it appear on electronic records as to who was present in the operating theatre at the time.
4. A week later Mr Riding made a Freedom of Information request (page 26). Other requests followed within the next few weeks (pages 29, 35 and 36). He was dissatisfied with the way these were handled and ultimately the Information Commissioner (ICO) issued three decision notices, all upholding the trust’s position. Mr Riding has appealed against two of these notices to the Tribunal.
5. DN FS50435332 relates to most of the September 2011 request. DN FS50437393 relates to the final element of the September 2011 request and to the other requests.

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6. Having considered the information in the bundles supplied to the Tribunal by the ICO (pages 1-140) I have reached the conclusion that neither of these appeals has a reasonable prospect of success. I consider it proper to strike them both out for that reason. Before making this decision, on 28 September I invited comment from Mr Riding, but none has been received.
7. My starting point is the request made 21 September 2011 (page 26). Mr Riding asks for the name of the other doctor recorded as being a surgeon on the operation case note. There follow six separate questions about the individual doctor, all of which are impossible to answer unless the doctor can be identified.
8. Neither the Trust nor Mr and Mrs Riding nor the ICO can decipher the name from looking at the document. Nor can I. The documents show the lengths which the Trust has gone to try to match the writing with the name of a doctor. Six separate members of staff have searched through lists of doctors on placement and lists of employees (page 81). An old computer system has been interrogated. The ICO is satisfied (para 28 DN page 6) that the Trust has conducted a reasonable search. Indeed he considered that the Trust went beyond what was strictly necessary by contacting another hospital in an attempt to identify the doctor.
9. In my judgement, it is inevitable that a Tribunal will conclude that the Trust does not hold information to identify the second doctor. There may be nice linguistic or grammatical arguments to be had about the precise grounds on which, absent the identity of the doctor, the request for six items of information about him must fail. The ICO is surely right however to conclude that, since the doctor cannot be identified, nothing can be done about them.
10. As I have indicated the final item of information requested in September 2011 is dealt with in DN FS50437393. Mr Riding widened his search for information to include a list of all qualified and trainee doctors employed by the Trust on the date of his operation five years earlier. On 18 October 2011 he widened the request yet again asking the Trust to obtain a list of trainees and locums from all sources who would have been present in the hospital on the day of his operation. He asked for more information about how his requests for information had been dealt with. He also asked about systems in place to account for staff being present on particular days under Health and Safety Regulations. On 8 November he asked, in respect of the day of his operation, how many day cases there were, the type of operation in each case, the start and end times of each operation, the theatre staff present at each operation including their qualifications, and the consultant's movements on that day to include "his time table from start to finish". Three days later (page36) he repeated some of the requests.
11. The Trust refused to deal with the requests covered by this decision notice on the ground that they were vexatious and the ICO has upheld this conclusion.
12. In my judgment it is in turn inevitable that a tribunal would reach the same result. In GIA/1871/2011, a decision of the Upper Tribunal, Judge Jacobs said:-
 - “ 10. Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the

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information sought, the purpose of the request, and the time and other resources that would be needed to provide it. ...”

13. Those requests are a clear breach of the requirement of proportionality and the Trust are entitled to invoke the protection of s14(1) Freedom of Information Act 2000. Regrettable as it must seem to Mr Riding, all that can reasonably be done by way of complaint, legal advice and requests for information has been done.

14. Having reached this conclusion based on proportionality and the written history there is no need for me to deal with an application from the ICO to consider other material under Reg 14 GRC Procedure Rules. I have not looked at that material. Nor is there any need to consider the Trust’s application to be joined as a party to the appeal.

(Signed on the original)

NJ Warren

Chamber President

Dated 5 November 2012