

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2012

Public Authority: Oxleas NHS Foundation Trust

Address: Pinewood House
Pinewood Place
Dartford
Kent
DA2 7WG

Decision (including any steps ordered)

1. The complainant requested information from Oxleas NHS Foundation Trust (the Trust) related to the conditions of patients and their treatments within a number of requests. The Trust has applied section 14(1) of the FOIA (vexatious requests) to those requests.
2. The Information Commissioner's decision is that the Trust has correctly applied section 14(1) of the FOIA. The Commissioner requires no steps to be taken.

Requests and responses

3. On 14 December 2011, the complainant wrote to the Trust and requested information on E. coli.
4. In further correspondence on 29 December 2011, the complainant made further requests for information on the administering of Clozapine.
5. On 5 January 2012 the complaint set out further requests for information in relation to '*Post-Operative Cognitive Dysfunction*'.
6. The requests are reproduced in the appendix attached at the end of this decision notice.

7. The Trust responded to the above requests on 9 January 2012. It applied section 14(1) of the FOIA (vexatious requests) and section 12(1) (costs exceeding the appropriate limit) to the request.
8. After carrying out an internal review, the Trust wrote to the complainant on 1 May 2012 and upheld its initial decision.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. Specifically, she complained that the Trust had not provided the information requested.
10. As the Trust had applied section 14(1) and section 12(1) of the FOIA to all of the requests the Commissioner's investigation focused on whether the Trust was entitled to rely upon either of these exemptions in order to refuse to comply with the requests.

Reasons for decision

11. The Commissioner has first considered whether section 14(1) has been correctly applied.
12. Section 14(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".
13. The Commissioner's guidance¹ explains that the term 'vexatious' is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (eg vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. When assessing whether a request is vexatious, the Commissioner considers the following questions:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

- Would complying with the request impose a significant burden?
 - Is the request designed to cause annoyance and disruption?
 - Does the request lack any serious purpose or value?
14. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.
15. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14(1) to be engaged.
16. In this case the Trust has argued to the Commissioner that the requests can fairly be seen as obsessive, that to comply with the requests would impose on it a significant burden and that they lack any serious purpose or value.
17. The Trust has provided the Commissioner with a table of requests and files containing those requests and correspondence which the complainant sent to the Trust. However, a significant portion of this information related to requests which were made after the date at which the Trust responded to the requests in the scope of the complaint. As such the Commissioner has not considered this evidence in making a decision on this case.
18. However, the Commissioner considers that the remainder of the information provided by the Trust is relevant and his analysis of that evidence is set out below.

Could the requests fairly be seen as obsessive?

19. An obsessive request is often a strong indication that the request is vexatious. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been addressed.
20. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive? The Commissioner's published guidance states that although a request in isolation may not be vexatious, if for example if it is the latest in a long series of overlapping requests or other

correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.

21. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
22. In this case the Trust has argued that the requests are obsessive in that the frequency and number of requests is indicative of them being so. The Commissioner has examined the requests within their history and context.
 - (i) *Requests prior to those within scope of the complaint*
23. The Trust has evidenced to the Commissioner the high number of requests the complainant made to it prior to those which are the subject of this decision notice. Some of these requests took the form of correspondence which was sent or copied to a number of recipients within the Trust and to other organisations.
24. Specifically, the Commissioner notes that the requests ran from September to October 2011 with regular frequency and were high in number: approximately 260 over this period. After considering these requests, the Commissioner notes that they are clearly focused around her relatives and more directly the Trust's treatment of a relative. The Trust provided a refusal notice in respect of the September-October requests on 1 November 2011, informing the complainant that to comply with the requests would exceed the appropriate limit as set out in section 12(1) of the FOIA and that the requests were being amalgamated for the purpose of the cost calculation (section 12(4) of the FOIA). The Trust asked the complainant to refine the requests so that it may be able to comply with them.
25. On 10 December 2011 the complainant again sent a number of requests to the Trust which it has argued to the Commissioner constitute a significantly high number: again approximately 250. The Commissioner considers that these requests were essentially repeated requests of those sent in October 2011. Whilst the Commissioner has borne in mind that this may have been an attempt by the complainant to make refined requests in view of the Trust's advice, he considers that those requests remained substantial in number and largely unrefined.

26. On 13 December 2011 the Trust refused the requests applying sections 14(1), 12(1) and 12(4) of the FOIA. On the same day the complainant made further requests.

(ii) Requests in time period of those within scope of the complaint

27. The Commissioner's investigation is focused on the requests made on 14 December 2011, 29 December 2011 and 5 January 2012. However, the complainant made further requests for information within this time period.

28. On 16 December 2011 the complainant made new requests within requests for internal reviews for earlier requests. On 21 December 2011 the complainant made further multiple requests for information.

29. Taking these factors into account, the Commissioner considers that the requests in question in this case may fairly be seen as obsessive. He is of the view that the complainant has made a substantial number of requests to the Trust. Whilst he has considered that to some extent these requests may be regarded as attempts by the complainant to make refined requests he considers that the manner in which this was conducted is suggestive of obsessive requests.

Indeed the Commissioner notes that the Trust informed the complainant in a refusal notice on 13 December 2011 that her requests were considered to be vexatious. It stated that:

'they are frequent, volumous, and obsessive in that they contain a complex mixture of accusations and complaints. To process these requests would indeed pose a significant burden in terms of time and expense to the Trust.

Therefore we are unable to comply further with these any other FOI requests from you...'

30. However, the complainant continued to make such requests, such as those on 21 December 2011, which are not the focus of this decision notice, and those of 29 December 2011 and 5 January 2012 which are.

In reaching his view in regard to this factor, the Commissioner has also taken into account that the Trust has informed him that it has attempted to provide advice to the complainant by inviting her to contact specific members of staff to discuss possible refinements to her requests, and that it has advised her of steps to take which may have allowed her to access information about her relative. This included the provision of consent forms to allow the complainant's relative to provide consent for the disclosure of information requested.

Would complying with the request impose a significant burden?

31. The Trust has informed the Commissioner that in its view the requests are 'not in themselves grossly oppressive.' However, it does consider that complying with the requests would impose a significant burden. In particular, it has argued that the context and history of the requests when taken as a whole create a grossly oppressive history.
32. The Commissioner has considered the requests in detail and specifically within their context and history as discussed above. He is of the view that the context and history of the requests is relevant to a consideration of the burden that complying with the requests would impose on the Trust. The Commissioner considers that complying with the requests would likely result in further requests which would likely be of such a nature as to be significantly burdensome; such is the pattern of the requests evidenced to the Commissioner. He therefore considers that complying with the requests would impose a significant burden.

Do the requests lack any serious purpose or value?

33. The Trust has accepted that, taken in isolation, the requests may be said to have a serious purpose and value in enabling greater public understanding. However, it has argued that given the context and history, the requests are suggestive of other purposes. Specifically the Trust has argued that the complainant's previous correspondence and requests have focused on the treatment of her relatives, her complaints about that treatment, her allegations of a 'cover-up' linked to that treatment, an on-going criminal case regarding her relatives and related issues.
34. The Commissioner considers that the requests do have serious purpose and value in terms of accountability and transparency. However, the Commissioner considers that any serious purpose or value in these requests does not in itself outweigh the other vexatious elements which he considers to be present.

Conclusion

35. The Commissioner considers that in this case there is evidence to demonstrate that the requests can fairly be characterised as obsessive, and that complying with the requests would impose a significant burden. Taking these into account, and despite the serious purpose or value of these requests, therefore he has concluded that the Trust was correct to apply section 14(1) to the requests.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

Rachael Cragg
Group Manager

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