

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 May 2017

Public Authority: Rotherham NHS Foundation Trust
Address: Rotherham Hospital
Moorgate Road, Oakwood
Rotherham
S60 2UD

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints made to Rotherham NHS Foundation Trust (the Trust) and its compliance with the Equality Act 2010.
2. The Commissioner's decision is that the Trust has correctly applied section 14(1) (vexatious request).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 6 May 2016, the complainant wrote to the Trust and requested information in the following terms:
 1. *Number of complaints received by the patients experience team since the CQC inspection in 2015.*
 2. *How many people the Trust has refused treatment to who have previously complained about the Trust?*
 3. *Name of the departments the complaints were about, and what lesson and what changes if any have been implemented.*
 4. *Number of complaints taken to the parliamentary ombudsman by the complainants who never received resolution from the trust.*

- 5. How many complaints is the trust dealing with from the parliamentary ombudsman?*
 - 6 Number for medical negligence cases since 2010, every year to be specified individually.*
 - 7. How many request for reasonable adjustments under the 2010 equality act denied by the trust since 2000 every year to be specified individual?*
 - 8. The trusts policy in making reasonable adjustments to people who are disabled.*
 - 9. How many staff employed by the trust have been investigated by the GMC since 2000 and what they have been investigated for, every year to be specified individually?*
 - 10. Name of all the Ophthalmology doctors, surgeons employed by the trust since 2010 up to the present time.*
 - 11. How many years the Ophthalmology doctor, surgeons and locum staff have worked for the trust? And their qualifications.*
 - 12. The salary of all board members of the trust.*
 - 13. All new policies implemented by the trust involving patient safety since 2013 all full policy documented to be provided*
5. The Trust responded on 4 July 2016 and refused to provide the requested information citing section 14(1) of the FOIA as its basis for doing so
 6. The Trust provided an internal review on 25 July 2016 in which it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 3 January 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the Trust has correctly applied section 14(1) of the FOIA to the request.

Background

9. The Trust told the Commissioner that the complainant received treatment in early 2013, and subsequently made a complaint to the

Trust regarding his treatment. Since that time he has been in regular contact with the Trust and had numerous meetings with its Directors, Governors, individual members of staff and various departments, and has also been in touch with regulators, MPs, Healthwatch and others, including the national media.

10. In December 2014, the Trust wrote to the complainant to explain that the investigation into his complaint had been completed in accordance with the Trust's Policy (a copy of which was provided to him) and that if dissatisfied with the response, the patient should contact PHSO who would investigate the Trust's handling of the complaint.
11. After further contact via various routes, the Chief Executive wrote to the complainant in March 2016 to place conditions on the complainant's contact with the Trust, in that he should deal only with the Trust's legal department (full contact details were provided). He was also asked to liaise with the legal department to arrange a visit he had already requested, to review his patient record (a copy of which had been already provided to him). He was advised that he may be asked to complete a subject access request to allow staff to correctly identify the items that he required access to (which was sent to him in April 2016), and he was offered the option of being accompanied by a member of the Patient Experience Team to assist him with his visit to support him in view of his disability.
12. Again, the complainant was provided with details of how to contact the PHSO.
13. Further to correspondence at that time with the legal team, who had tried to obtain dates from the complainant of when it would be convenient for him to attend to view his notes (dates were never provided by the complainant), the FOI team then began to receive requests for information (three September 2014 – February 2015) and a response was provided to him.
14. Since that time, the records show that there appears to be little other correspondence with the complainant, until the request which is the subject of this decision notice.
15. As a member of the Trust, the complainant was included on a blanket invitation to attend a public stakeholder event regarding Quality Priorities. The complainant confirmed that he would attend, and he asked that the Trust recognise his disability and that arrangements are made for him – which they were.
16. The Trust considered that the complainant's concerns appear to stem from the treatment he received in 2013 and subsequent grievance raised with the Trust.

Reasons for decision

Section 1(1)

17. *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.

Section 14(1)

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

19. The term 'vexatious' is not defined in the FOIA. The Upper-Tier Tribunal considered the issue of vexatious requests in the case of the Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as *"manifestly unjustified, inappropriate or improper use of a formal procedure"*..

20. The Dransfield case identified four factors that may be present in vexatious requests:

- the burden imposed by the request (on the public authority and its staff)
- the motive of the requester
- harassment or distress caused to staff
- the value or serious purpose of the request.

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. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

23. The Commissioner has identified a number of 'indicators' which may also be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests¹. In short they include:
- abusive or aggressive language
 - burden on the authority
 - personal grudges
 - unreasonable persistence
 - unfounded accusations
 - intransigence
 - frequent or overlapping requests; and
 - deliberate intention to cause annoyance.
24. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
25. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.

Would complying with the request impose a significant burden?

26. In its submission to the Commissioner the Trust provided details of previous communications with the complainant relating to this request. It has not provided information relating to his medical care.
27. Although the request in itself is not grossly oppressive, the Trust does consider that it has spent considerable time and resources in dealing with the original complaint. The Trust provided a copy of a letter sent to the complainant on 11 March 2016 which it considered evidences that it was unlikely that the complainant would be satisfied with a response to the questions he posed via FOI, and that it was highly likely that he would follow up with further enquiries, which would place an unnecessary burden on the organisation.
28. This letter also highlights the length of time this matter has been on-going and outlines the efforts the Trust has made to resolve the issues.

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

29. The Trust stated it had considered the Dransfield case, and as such, the complainant's past pattern of behaviour was considered. It was also for this reason that no further explanation was provided for the refusal to the complainant, i.e. a response would elicit requests for additional information.
30. This behaviour is evidenced by the complainant's responses to the Trust's refusal email to him on 4 July 2016. It stated that the recipient of the correspondence was visibly distressed by the tone of the emails, having also received telephone calls from the complainant chasing up a response.
31. The Trust further stated that although it had not been received prior to its decision and review of the FOI request, the complainant had raised a Data Protection concern with the Commissioner. This provides further evidence of extensive correspondence from the complainant to the organisation, arising from his original 2013 medical procedure and a grievance with the organisation.
32. It considered that all of the evidence indicates that the complainant has received extensive support from the Trust and others in pursuit of trying to come to a conclusion with regard to his complaint. The Trust considered that this request suggests that the complainant is now seeking to pursue the issue beyond the point which would objectively be considered reasonable.
33. In doing so, the Trust also referenced *Betts v ICO EA/2007/0109* (19 May 2008) which concluded that an unwillingness to accept evidence was an indication of someone obsessed with his particular viewpoint, i.e. as in this case, the outcome of the complainant's 2013 procedure.
34. The Commissioner has considered the request in detail and specifically within its context and history as discussed above. She is of the view that the context and history of the request is relevant to a consideration of the burden that complying with the request would impose on the Trust.
35. The Commissioner considers that complying with the request 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 correspondence evidenced to the Commissioner. She therefore considers that complying with the request would impose a significant burden.

Is the request obsessive?

36. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

37. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, 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.
38. 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.
39. The Commissioner has taken into account the context and background to the request and considers that the attempt to reopen an issue which has already been comprehensively addressed by the trust could reasonably be described as obsessive.

Conclusion

40. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the Trust was correct to find the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the Trust. She is satisfied that despite being advised on two occasions to contact PHSO if he was unhappy with the outcome of his complaint, the request is obsessive and reflected the desire to keep the issue alive rather than to access recorded information. Accordingly, in all the circumstances of this case the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

41. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

42. 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.
43. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF