

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 August 2024**

Public Authority: **North Middlesex University Hospital Trust**

Address: **Sterling Way
London
N18 1QX**

Decision (including any steps ordered)

1. The complainant has made a number of requests to North Middlesex University Hospital Trust ('the Trust'). The requests' topics include information about the number of complaints received about the CEO and the complaints procedure, discharge criteria and processes, details of how a complaint had been handled and copies of particular test results. The Trust refused the requests under section 14(1) FOIA (vexatious requests) and advised that it would no longer respond to requests about the same or similar topics under section 17(6) of FOIA.
2. The Commissioner's decision is that the Trust was entitled to rely on section 14(1) of FOIA to refuse the requests covered in this notice. He also finds that the Trust breached sections 10(1) and 17(5) of FOIA by failing to provide its responses and relevant refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Requests and responses

Request 1

4. On 15 November 2023, the complainant wrote to the Trust and requested information in the following terms:
 - “1. Provide a breakdown of the number of complaints received against your CEO since she joined in 2021 required by year & month including what categories these complaints come under.
 2. Detail what is the process for dealing with complaints received against your CEO.
 3. Are the executive board made aware of any complaints received against the CEO.
 4. What action would be taken against the CEO if the complaint was upheld.”
5. The Trust responded on 16 January 2024. It relied on section 40 of FOIA (personal information) for the first question and provided responses to the remaining questions.
6. The complainant requested an internal review on 16 January 2024. The Trust wrote to the complainant on 2 April 2024 and advised it was refusing the request under section 14(1) of FOIA. It also advised that it would apply section 17(6) of FOIA to future requests on the same or similar subject.

Request 2

7. On 18 November 2023, the complainant wrote to the Trust and requested information in the following terms:
 - “1. Details of exactly what work was carried out on our complaint, broken down by date & times & what department carried out the work.
 2. Details broken down by date of any correspondence sent to us and by whom (if not able to provide a name a department name would be sufficient)
 3. According to the letter from your CEO a copy of the discharge review that was supposed to have been done in September 2021 was completed & sent to us. When this was requested via a FOI request in January 2023 you first claimed you could not find it, then claimed that the person actioned to do it had left before the due completion date which was false & we were then advised it would be completed by April 2023, but we have still not received a copy & so far you have been unable to provide a copy to the PHSO either. If this discharge review

has been done as claimed then we would as part of this FOI request require proof it was sent & a copy of this review.

4. We requested details of the Line Manager supervising an OTA [NAME REDACTED] & was passed onto PALS to get the name by your department. The letter from your CEO claims the Trust has responded to us on this point so we require proof & a copy of the correspondence from the Trust confirming the name as to date we have never received this information so the letter from the CEO is contradictory.
5. We require as part of this FOI Request a copy of **ALL 6 PAGES** of the ABL90 Radiometer series test carried out in A&E on 13th January 2021 as we only received 5 pages so there is 1 page of results missing which I can prove as per the attached as you can see the page with the punch holes on the left hand side the sheet is folded over, but no copy of this particular result sheet was ever sent with the other records. I am aware that your CEO has tried to skirt around the issue by going on about oxygen levels while trying to divert from the fact that we require all pages of this ABL90 test. So we just require all 6 pages or an explanation as to why 1 page is missing.
6. We also require a copy as part of this FOI request of the Cardiac Enzyme test results that were done according to the A&E summary that was sent to the GP (of which I am attaching a copy of). The CEO in her letter claims that the Trust has responded fully on this matter, however, this is not the case as the tests that were quoted in a previous letter "Alkaline Transaminase" related to a Liver Function test (which you can clearly see is shown separately as part of the investigations) & a Urea & Electrolytes test "Creatinine Kinase" which relates to Kidney functions are biochemistry tests which again you can see is listed as a separate investigation and are not Cardiac Enzyme tests. I am also attaching a copy of an email from the British Heart Foundation which confirms this & which confirms that a Creatine Kinase (CK) test that would be specific to the heart would be a CK MB. So based on this email from a qualified Cardiac Nurse, the evidence from the A&E summary & your CEO confirming Cardiac enzymes test were done, we require the correct results for the CK MB test that would have been done as part of this cardiac enzyme test or the troponin test result as although you CEO has said this was not done historically it does show as part of the test available to be done on the ABL90 radiometer test sheet in 2021."
8. The Trust responded on 16 January 2024. It advised that: "This FOI relates to a complaint which has been responded to fully and which the Parliamentary and Health Service Ombudsman have reviewed and closed."

9. The complainant requested an internal review on 16 January 2024. The Trust wrote to the complainant on 2 April 2024 and advised it was refusing the request under section 14(1) of FOIA. It also advised that it would apply section 17(6) of FOIA to future requests on the same or similar subject.

Request 3

10. On 22 December 2023, the complainant wrote to the Trust and requested information in the following terms:

"Based on the responses below, I am now submitting a further FOI request for the following information.

1) As previously advised that a further detailed discussion is held every Thursday around the care and discharge planning which is documented on EPR, so therefore can you please provide me with a copy of this record which would have been recorded on 14th January 2021 for [REDACTED]. Please do not refer us back to PALS for a copy of these records as they have been instructed to ignore any contact from us.

2) You have advised that the person ultimately responsible for ensuring the discharge criteria is met is the named nurse looking after the patient, so can you please advise the name of this Nurse. To be clear we already have medical records with individuals names, but as there appears to be more than one Nurse who looked after [REDACTED], it is not clear which would be the one responsible in this case. As we already have names in the medical records, I do not believe there should be any issue with data protection in providing this name which is needed in order to raise a concern about them to the Nursing Organisation which you are therefore legally obliged to do."

11. The Trust responded on 2 April 2024 and advised it was refusing the request under section 14(1) of FOIA.

Scope of the case

12. The complainant contacted the Commissioner on 5 April 2024 to complain about the way their requests for information had been handled.
13. The Commissioner considers that the scope of his investigation is to determine whether the Trust was entitled to refuse the requests as vexatious.

Reasons for decision

Section 14(1) – vexatious requests

14. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
15. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) 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. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
18. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)². Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
19. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the motive (of the requester);
- the value or serious purpose (of the request); and
- any harassment or distress (of and to staff).

21. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

The Trust's view

22. The Trust has explained that the information requested relates to a complaint raised in 2021 where the complainant's family were dissatisfied with the care provided to a family member who sadly passed away.
23. The Trust explained that the family's complaint has been fully investigated and responded to through its own complaints process. The Trust added that the Parliamentary and Health Service Ombudsman ('PHSO') reviewed the complaint in December 2023 and is not intending to take any further action as it was satisfied that the Trust had responded in full.
24. The Trust explained that since 2021 the family have persistently contacted staff within the Trust. It provided the Commissioner with a list of 26 instances where the family has contacted various members of staff within the Trust, either regarding requests for information or their complaint.
25. The Trust added that there have also been various telephone calls and emails to individual staff members, some of whom have had no previous involvement in these matters.
26. The Trust explained that its Chief Executive wrote to the family in June 2023 advising that their recent approaches were impacting on the psychological wellbeing of Trust staff and that the Trust has spent considerable time and expended substantial resource dealing with the requests and complaints they had raised. The letter outlined measures to limit contact between Trust staff and the family. The letter also advised the family of the impact of the requests, and gave notice that the Trust may refuse any future requests as vexatious.
27. The Trust added that requests being reviewed in the Commissioner's investigation relate to the same details that have already been dealt

with through the Trust's complaints process where it has sought to provide all available information to the family.

28. The Trust considers that it will not be able to provide the family with further or different answers or outcomes to those which it has already given. It added that continuing to correspond on these issues involves considerable resources which are then diverted away from its core functions as a healthcare provider. The Trust has stated that it does not appear that there is anything else it can reasonably do to alleviate the family's concerns and this is a conclusion supported by the PHSO.

The complainant's view

29. The complainant has argued that their requests are not vexatious and that the Trust is now marking any requests sent as vexatious regardless of what they ask simply because of the complaint made against it following the family member's death.

The Commissioner's decision

30. 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.
31. The Commissioner will first consider the burden of the requests on the Trust. He notes that, in isolation, each request does not appear particularly burdensome. However, when considered in context of the other correspondence from the family, that includes other requests under FOIA, and follow-on requests, the Commissioner can see the cumulative effect of the requests. From information provided by both the complainant and the Trust, the Commissioner notes that the Trust has provided responses to the previous requests made by the complainant, and that these often prompted follow-up requests and correspondence. He also notes the Trust's statement that it has already covered the topics covered by the request as part of its investigation into the family's complaint and had already tried to provide as much information as possible.
32. When considering the motive of the complainant, the Commissioner acknowledges that the requests do appear to focus on the healthcare services provided to a family member by the Trust, and the complaint from the family that followed. The Commissioner empathises with the sad circumstances of losing a loved one, and he understands the desire to have all the details related to their care. The Commissioner considers that the requests have a value and serious purpose to the complainant and their family for this reason.

33. That said, the Commissioner is aware that the family has also complained via the Trust's complaints process and that the complaint has also been reviewed by the PHSO. He considers that this reduces the value and purpose of the requests in terms of FOIA as these complaint processes have already considered the family's concerns and provided them with information concerning the family member's care. The Commissioner is also mindful that disclosures under FOIA are to the world at large and cannot just be restricted to family members. Therefore in many cases FOIA may not be the correct access regime for information about medical test results and details of personal healthcare.
34. The Commissioner notes that the language used in the requests is not abusive in manner but does at times portray the frustration of the complainant. He considers that this itself would not cause harassment or distress to Trust staff but again, in context of the volume of correspondence and the family's persistence following the outcome of the Trust complaint process and PHSO review, the Commissioner can understand how Trust staff may be affected. He notes that in its submission the Trust has stated that it does not believe there is anything else it can reasonably do to alleviate the family's concerns.
35. In considering these elements the Commissioner has determined that, although the complainant and their family have a valid purpose for making the requests, they have also exhausted the Trust's own complaints process where any relevant information would have been already made available to them. He notes that the Trust has provided responses to requests following the complaint outcome, and only started to apply section 14(1) to requests when it became apparent that the complainant and their family were continuing to submit requests related to their complaint with the Trust.
36. The Commissioner therefore believes that the Trust was entitled to rely on section 14(1) of FOIA to refuse the requests because they were vexatious.

Procedural matters

37. The Commissioner finds that the Trust breached section 10(1) of FOIA by failing to provide its response to each of the requests covered in this notice within 20 working days.
38. Under section 17(1) a public authority that is relying upon an exemption to withhold information, must issue a refusal notice within 20 working days.

References: IC-299241-S2P5 (lead case), IC-299228-Z0T8,
IC-299242-N8N6



39. As the Trust did not provide a refusal notice specifying the exemption it ultimately came to rely upon to refuse the requests, within 20 working days, it breached section 17(1) of FOIA.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF