

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 February 2019

**Public Authority:** Department of Health

**Address:** Brendan.g.oneill@health-ni.gov.uk

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Department of Health (DoH) in relation to health services. The DoH applied sections 14(1) and 14(2) of the FOIA to the complainant's request.
2. The Commissioner's decision is that the DoH has correctly applied section 14 (2) of the FOIA to the requested information. The Commissioner has also decided that the DoH breached section 17(5) of the FOIA by not issuing an appropriate notice of its reliance on section 14 of the FOIA in relation to the complainant's current request.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

4. The complainant on 11 July 2018 made the following request for information to the DoH:-
  - 1) Please clarify if Borderline Personality Disorder sufferers (10% suicide rate) and Prisoners (above average suicide rate) are both included or excluded from the current protect life strategy?

- 2) The statistics which are used in NI by the PHA re suicide ("73% of suicides NOT known to health services, over 10 years")....by 'health services' do you refer to psychological therapies/psychiatrist/psychologists only, or do you include all those treated by their GPs with anti-depressants also? Please note in other studies, the most commonly used service was the GP and of 1,600 suicides 57% were known to have a MH disorder.
5. The complainant contacted the Commissioner to state that the DoH had not responded to the above request. The Commissioner wrote to the DoH to request that it provide a response to the complainant by 28 October 2018.

### **Scope of the case**

6. The complainant contacted the Commissioner on 18 September 2018 to complain about the way her request for information had been handled.
7. The Commissioner wrote to the DoH as detailed in the paragraph above, requesting a response to the complainant by 28 October 2018. The DoH responded to the Commissioner on 24 October, stating that the complainant had made the same request to the DoH on 13 May 2018, and the DoH had responded on 21 May 2018. A full response was provided and the DoH, after receiving further correspondence from the complainant about the same issues, together with the background of a wider range of continuous correspondence and communication from her about similar and frequently overlapping topics, contacted the complainant on 12 June 2018 to state that it considered her correspondence to amount to vexatious conduct and that it would not be engaging with her again regarding these issues.
8. The Commissioner has considered the DoH's handling of the complainant's request.

## **Reasons for decision**

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### **Section 14(2) – Repeated requests**

9. Section 14(2) of the FOIA states that:

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

### **The complainant’s position**

10. The complainant requested information from the Public Health Agency (PHA) on 24 January 2018. For some of the information relating to her request (namely the information in the questions outlined in paragraph 4 above) she was referred to the DoH, which the PHA confirmed held information in relation to the request and with whom they had been in touch.

### **The DoH’s position**

11. The DoH has informed the Commissioner that, when the complainant was referred to it by the PHA, she made a request on 13 May 2018 for the same information as is the subject of this current request of 11 July 2018. The DoH provided copies of the request and its response to same to the Commissioner.
12. The DoH provided a response to the complainant’s request on 21 May 2018. It provided the complainant with some information in response to her request and stated that it did not hold the remaining information within the scope of that request. At no point did the complainant try to engage with the DoH’s internal review process following that request before submitting an identical request on 11 July 2018. The DoH did not provide a response or acknowledgement to that request, as it had previously given the complainant a notice on 12 June 2018 to state that it would not be corresponding with her further regarding these and other similar issues.

13. The Commissioner, having read the complainant's request of 13 May 2018, and the complainant's response, considers that the request is identical in wording to the complainant's subsequent request of 11 July 2018. The Commissioner considers that the DoH provided a full response to the complainant's request when it was submitted on 13 May and the complainant, if dissatisfied with that response, should have engaged with the DoH's internal review process. The Commissioner has seen no evidence that she did engage with that process, and the DoH has confirmed that she did not. Therefore, the Commissioner considers that section 14(2) of the FOIA was correctly applied to the complainant's request. As this is the case, she has not considered the application of section 14(1) to the complainant's request.

### **Procedural matters**

14. Section 17(5) of the FOIA states that:-

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) of the FOIA states that:-

"Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

15. The Commissioner considers that, although the DoH did not provide the complainant with such a notice in relation to the request she submitted on 13 May 2018, that request was responded to in full. The letter to the complainant of 12 June 2018 stated that her previous correspondence amounted to vexatious conduct, however it did not specify a particular request made by the complainant, nor that it was applying section 14 to it. In all the circumstances of the case, the Commissioner does not consider that the letter of 12 June 2018 constituted an appropriate notice under section 17(6)(b) of the DoH's reliance on section 14, as it did not state that it was relying on this specific section of the FOIA. The Commissioner considers that it would have been reasonable in all the circumstances to expect the DoH to serve a further notice in relation to the current request, therefore the DoH has breached section 17(5) of the FOIA.

## Right of appeal

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16. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. 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 .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**