

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2019

Public Authority: Drs Hosie, Hosie, Davies, Hart and Glatzel,
Partners of Dicconson Group Practice

Address: Wigan Health Centre
Frog Lane
Wigan
WN6 7LB

Decision (including any steps ordered)

1. The complainant has requested information regarding an investigation carried out into a complaint he had made. The request was refused as vexatious.
2. The Commissioner's decision is that the Partners of the Dicconson Group Practice ("the Practice") have correctly applied section 14 of the FOIA to refuse the request.
3. The Commissioner does not require any further steps.

Status of GPs under the FOIA

4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is also a separate public authority. The actual duty under section 1 of the FOIA, to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions, rests with each individual GP.
5. However, the Commissioner acknowledges that when an applicant makes an information request to a medical practice, or a single GP within the practice, it is reasonable to expect, for convenience, that the practice will act as the single point of contact and provide a response on behalf of the GPs concerned.

6. For the purposes of this decision notice, references to the views and actions of "the Practice" should be read as referring to the collective views and actions of the above-named GPs.

Request and response

7. On 27 May 2019, the complainant wrote to the Practice and requested information about a particular doctor ("the Doctor") in the following terms:

"Please inform me whether or not you hold the information specified below, and if you do please send me a copy of all the recorded information you hold fitting the criteria of my requests.

- 1) In respect of [the Doctor] being interviewed in 2010 by Ashton Leigh and Wigan Primary Care Trust's complaint investigator, as a result of a patient complaining about [the Doctor]'s behaviour during an August 2009 appointment, please provide a copy of information you hold of what:-*
 - a) Was the number of times [the Doctor] was interviewed in 2010.*
 - b) Was the date and location of each interview and also what form did each interview take so for example was [the Doctor] was it a face to face interview or was it a telephone interview.*
- 2) What date did [the Doctor] start back to work in 2010 after being on maternity leave.*
- 3) Please provide a copy of all information you hold regarding [the Doctor]'s; reflections, lessons learned and also her needs and outcomes that she identified as a result of a patient complaining about [the Doctor]'s behaviour during a 03 August 2009 appointment.*
- 4) Please provide a copy of all information that you held, prior to 2 September 2016, fitting criteria of Tribunal's [date] decision (Appeal No: [redacted]) and yet you failed to send to the appellant by 2 September 2016 as you were ordered to by the Tribunal's [date] decision which stated; 'Action Required. The Public Authority must by 2 September 2016 disclose to the Complainant the minutes of all practice meetings for the period 2009 to 1 September 2015 redacted to remove any commercially sensitive or personal data.'"*

8. The Practice responded on 26 June 2019 in the following terms:

"We believe your FOI request dated 27 May 2018 is vexatious and will not be responding."

9. Following an internal review the Practice wrote to the complainant on 20 October 2018. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 8 January 2019 to complain about the way his request for information had been handled.
11. The scope of this notice is to determine whether the request was vexatious.

Background

12. In 2009, the complainant attended a GP appointment ("the Appointment") at the practice, where he was then a patient. The complainant claims that the Doctor was rude, aggressive and racially abusive towards him. The Doctor accepts that she may have used inappropriate language and that there was a breakdown in communication during the appointment but denied that she had been racially abusive. A complaint about the Doctor was subsequently filed and it is this complaint (and its subsequent investigation) which underlies the request.

Reasons for decision

13. Section 1(1) of the FOIA states that:

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.*

14. Section 14 of the FOIA states that:

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

15. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
16. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. Dransfield also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).
18. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
19. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: “The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies”.
20. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

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

21. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

The complainant's view

22. The complainant has argued that it is unfair to characterise his request as vexatious because it relates to a matter which is of great importance to him and because he has been unable to achieve the resolution he needs.
23. The complainant has argued that the way the Doctor behaved during the Appointment has left him feeling traumatised and suffering symptoms of Post-Traumatic Stress Disorder (PTSD). He provided copies of a psychiatric report which corroborates his claim to be suffering from symptoms of PTSD. In particular, he believes that the Doctor acted towards him in a way he found racially offensive.
24. Finally, in addition to medical information, the complainant also provided a copy of a witness statement from a community development worker, who had also attended the Appointment and who backed up the complainant's version of the events that had taken place.
25. In summary, the complainant argued:

"My FOI is part of my attempt to hold [the Doctor] (and also Dicconson Group Practice and other involved bodies) to account in respect of the issues mentioned in my FOI (and below) and which have caused me, over very many years, much ongoing detriment. These matters are of significant public interest.

"There has been a cover-up and a disregard of, for example, the obligations of the National Health Service complaints process and the safeguarding of vulnerable adults procedures."

The Practice's view

26. The Practice provided the Commissioner with a detailed version of the events which had taken place between the date of the Appointment and the date of the request.
27. The Doctor had, the Practice explained, always accepted that some of the language she had used was inappropriate. The Doctor had apologised to the complainant in 2009 and continued to do so.

28. However, the Practice noted that the complainant appeared either unable or unwilling to put the matter to rest and continued to pursue it to an unreasonable degree.

"[the complainant] initially complained to Primary Care Trust (PCT) about [the Doctor]'s actions [during the Appointment] and an Investigation was initiated. A complaint was subsequently made to the Local Primary Care Trust who also launched an investigation. The PCT wrote to [the complainant] on 20 October 2010 to say that they found no evidence that [the Doctor] acted in a racist manner but she accepted that the words were inappropriate and had apologised for her actions. Being dissatisfied with this response from the PCT [the complainant] exercised his right to ask the Parliamentary and Health Service Ombudsman to review this PCT Investigation. The PHSO produced a final report on 16 April 2015 which once again stated that whilst it was inappropriate to swear during the consultation it did not amount to racial abuse and found no failings on the part of the practice or the PCT."

29. The Practice also notice that the complainant had asked the police to investigate the actions of the Doctor, but that no criminal investigation had been pursued. A legal challenge to the Practice was made in 2013 by the complainant, but this was discontinued.
30. As well as his attempts to pursue matters via official channels, the Practice also noted that the complainant had submitted a number of information requests. The examples presented had an underlying theme of relating to either the Appointment or to issues regarding racism and racial abuse.
31. The Practice argued that the complainant's information requests had drifted to the point where they were now focused on continuing his underlying grievance, rather than seeking information. It argued that the information requested served no wider public interest and was of value only to the requester.

The Commissioner's view

32. The Commissioner's view is that the request, when considered in its wider context, was vexatious.
33. In reaching this view, the Commissioner is happy to accept that the events which took place during the Appointment have had a profound psychological effect on the complainant. The Commissioner cannot provide a judgement on the events which took place that day, but it is quite clear, from the extensive medical evidence which the complainant

has provided, that he experienced the event in a way which has proved profoundly traumatic.

34. The Commissioner also acknowledges that both she and the Tribunal have previously found the Practice wanting in the way it has handled some of the complainant's requests. However, this does not mean that continuing to submit requests is likely to serve a useful purpose. The Practice has supplied the complainant with a great deal of information over the past decade. Rather than bringing matters toward a conclusion, each disclosure has merely generated fresh rounds of correspondence and requests.
35. Indeed the Commissioner considers that, were the Practice to answer this particular request, it would likely only generate further correspondence with the complaint. Correspondence which the Commissioner considers now considers serves no useful purpose.
36. An issue for the Commissioner to consider in this case is not the effect that the Appointment had on the complainant but whether, in answering the request, the Practice is likely to move matters forward. The Commissioner's view is that this is unlikely to happen.
37. The complainant has, over a period of nearly a decade, exercised his rights to have the matter dealt with by the PCT, the PHSO, the police and the courts. All of those bodies have reached essentially the same conclusion – that whilst the Doctor's actions may have been inappropriate, they did not amount to racial abuse.
38. It is clear that the complainant does not accept either this conclusion or that the matter has been investigated thoroughly. As a result the Commissioner believes that answering this request is unlikely to bring the matter to a close.
39. The complainant's stated purpose is to hold the Doctor to account for her actions during the Appointment. The complainant has already had multiple opportunities to hold the Doctor to account via the appropriate channels. Using the FOIA to pursue matters which have already been investigated and addressed is an abuse of the process.
40. It is clear that the complainant has a keen personal interest in the information that the Practice might hold. However, the Commissioner can see little wider public interest in the request. Indeed, she considers that there is a greater value in the Practice being able to devote more time to serving its patients instead of engaging in protracted correspondence with the complainant.

41. The Commissioner therefore concludes that the request was vexatious and thus the Practice was entitled to rely on section 14 of the FOIA to refuse it.

Other matters

42. Whilst there is no statutory deadline for carrying out an internal review, the Commissioner considers that a public authority should normally take no longer than 20 working days to inform the complainant of the outcome of a review and should never take longer than 40 working days.
43. In this case, the complainant did not receive the outcome of the review which he had requested until three months after he requested it.² The Commissioner considers this to be poor practice.

² The Practice explained that the outcome of the internal review had been drafted earlier (no precise date was given) but not sent due to an administrative error.

Right of appeal

44. 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@justice.gov.uk

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

45. 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.
46. 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

Ben Tomes
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