

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2014

Public Authority: NHS Hillingdon Clinical Commissioning Group

Address: Kirk House
97-109 High Street, Yiewsley
Middlesex
UB7 7HJ

Decision (including any steps ordered)

1. The complainant made a number of requests for information after raising a concern with NHS Hillingdon Clinical Commissioning Group (the CCG).
2. The Commissioner's decision is that the CCG has incorrectly applied section 14(1) to all the requests.
3. The Commissioner requires the public authority to issue a fresh response to the complainant with regard to CCG/0644 and CCG/0643 without reliance on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. In October 2013, the complainant wrote to Hillingdon Clinical Commissioning Group (CCG) and requested information relating to its Official Lead GP for Continuing GP Education (Dr S). The response confirmed that Dr S was the Official Lead GP for Continuing GP Education. Following this response the complainant raised some concerns about the extra duties this entailed, and that by carrying these out Dr S was unable to comply with requirements under the DPA.

6. The CCG responded on 17 December 2013 and explained that the concerns related to general practice contractual concerns, and these would be dealt with by NHS England. In addition it explained that Dr S's extra roles related to educational activities and was managed through the Deanery.
7. Following further correspondence from the complainant, on 30 December 2013 the CCG wrote to him again. It stated that Dr S was not in fact the Lead GP for CPD. The CCG explained that this role was still undertaken by the Deanery/Local Education Training Board for NW London.
8. A number of letters and emails between the parties followed. In essence the complainant was concerned that Dr S was claiming to be the Lead GP for CPD, yet the CCG had contradicted this.
9. On 27 January 2014 the complainant made an official complaint to the CCG about the conduct of its Chief Operating Officer who had dealt with his initial inquiry.
10. On 29 January 2014 the complainant wrote again to the CCG further to the complaint which included the FOI request CCG/0644.
11. On 3 February 2014 request reference CCG/0618 was made and request reference CCG/0643 was subsequently made on 6 March 2014. On 12 March 2014 the complainant made request reference CCG/0652.
12. The requests are detailed in the annex at the end of the decision notice.
13. The CCG responded on 1 April 2014 and refused to provide any of the requested information. It cited section 14(1) of the FOIA.
14. The CCG explained that part of request CCG/0644 was being considered under the DPA. However, it maintained that the remainder fell under its claim that the request was vexatious.
15. It further explained that it would be usual practice to offer an internal review, however, as it had not met the requirements of the FOIA with regard to response times for two of the FOI requests it had reviewed its response prior to sending it. It maintained its application of section 14(1).

Scope of the case

16. The complainant contacted the Commissioner on 16 April 2014 to complain about the way his requests for information had been handled.
17. The Commissioner acknowledges that since making his complaint, the complainant considered that two of the outstanding four requests could be closed by the CCG (CCG/0652, CCG/0618). However, although not seeking disclosure of that information, the complainant still wished for the Commissioner to determine if section 14(1) had been correctly applied in those instances.
18. As above the complainant's concern relates to the blanket application of section 14 to his requests. Therefore, the Commissioner considers the scope of this case to be to determine if the CCG has correctly applied section 14(1) to the requests and if it has complied with its obligations under section 17(1) of the FOIA.

Reasons for decision

19. In correspondence with the Commissioner the CCG has already acknowledged that it did not comply with Section 17(1) of the FOIA. Therefore he does not require any steps to be taken with regard to this.

Section 14(1)

20. 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. There is no public interest test.
21. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
22. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - the burden imposed by the request (on the public and its staff);
 - the motive of the requester;
 - the value or serious purpose of the request; and

- any harassment or distress of and to staff.
23. 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).
24. 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.
25. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests¹. 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.

Request reference CCG/0644

26. The CCG maintains that this request was of a vexatious nature. The request was intended to collect as much information as possible and to continue the requestor's own investigation that was the subject of his complaint. The CCG considers that it was unacceptable for the complainant to continue submitting FOI requests which could have led to further questions or further additions that the complainant wanted added to the complaint.
27. However during the Commissioner's investigation, the CCG stated it had reconsidered the request and it is now of the view that this request should be exempt under Section 40(1) and Section 40(2) of the FOI Act. The request, though asking for email/correspondence relating to a particular subject matter, also asks for information that refers to the complainant's own correspondence and/or that of a third party individual.

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[http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_special_list_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~/media/documents/library/Freedom_of_Information/Detailed_special_list_guides/dealing-with-vexatious-requests.ashx)

28. The CCG has not provided any further information in support of its argument that this information should be withheld under section 40 of the FOIA and has not informed the complainant of its intention to rely on section 40(1) for this request. Furthermore, the complainant has indicated that his concern is that all of his requests were deemed vexatious and therefore this notice purely considers the application of section 14.

Request reference CCG/0618, CCG/0643 and CCG/0652:

29. The CCG considers these requests were of a vexatious nature for the following reasons:

30. It was essential that the CCG be able to deal with the complaint made by the complainant that these requests related to and to do so in its own way ensuring that the CCG adhered to NHS complaints policy and procedures. The requests indicated that the complainant was carrying out their own investigation which the CCG considered to be circumventing the CCG's own formal complaints process. The complainant should wait for the outcome of that investigation and not pre-empt the decision or chosen process. The complainant would then have a formal response and if they were not satisfied, could then complain to the ombudsman.

31. The CCG also considered that, whilst the complaint was live, the requests could cause distress to staff that were already subject to the complaint.

Specific to request reference CCG/0618;

32. The CCG considered that the request appeared to lack any serious purpose. The CCG considered there was no serious purpose or value in knowing the properties of a word document used to produce a pdf. The information would not necessarily be accurate, for example where an existing word document is emailed and re-saved to the server.

33. The FOI request did not address any of the issues raised in correspondence over the document title and author properties. The CCG, as with the former North West London Primary Care Trusts, works closely together with the other North West London CCGs. It is very common for staff to move around the different organisations and because of this; documents are often shared/moved with them. Background properties can follow the document. The meaning is of no value.

Specific for request reference CCG/0652;

34. The CCG stated that its FOI responses can be provided by anyone as long as the statutory duties of the FOI Act are adhered to. How the information collated internally is of little importance or usefulness. Ultimately, it is the Accountable Officer who would be responsible for the organisation's conduct and to ensure that internal processes were in place to cover its statutory duties. It is not relevant who fulfils the FOI request but that the organisation fulfils the request as required by the FOI Act. It was clear that the complainant is seeking information to continue their own investigation into the concerns that they had and which led to the complaint. It was considered that this was circumventing the CCG's formal complaints process.
35. In conclusion, the CCG considered it must be able to investigate and respond to the complaint made by the complainant through a process that adheres to national NHS policy and not deal with the micro analytical investigation being carried out by the complainant through requesting information which seems to be trying to circumvent the complaints process of BHH Federation (Brent, Harrow, and Hillingdon CCGs and pre-empt the CCG's decision.

The Commissioner's decision

36. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
37. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
38. In correspondence with the Commissioner, the complainant explained that he considered the blanket application of section 14(1) to the four FOI requests to have been incorrectly applied. In general concerning those requests, the complainant further explained:
 - i. All four requests were for information patently relevant to the complaint made, and each had a very clear and valuable purpose. For example, one was submitted to identify how the original FOI response (CCG/0644) relating to the Lead GP CPD had been arrived at. If this had been signed off and then the same person

had stated it was incorrect, this would be relevant to the complaint, because the statement that the London Deanery held the role/title would be a "lie". Therefore, how the original response was arrived at was of fundamental relevance to the complaint to the CCG. The complainant had requested the full records of how that first FOI response had been arrived at in order to establish who at the CCG had signed it off authorising the CSU to release the information.

- ii. All four FOI requests were specific and not in any manner vague. They were very clearly far from being a *fishing expedition* and were plainly not submitted with the purpose of pointlessly harassing the CCG.
 - iii. The sum total of the burden placed on the CCG by the four requests was extremely minimal. Even combined they would be unlikely to have required more than a few hours work at the absolute maximum to fulfil the combined four in their entirety. Nowhere near a level such as to even make a section 12 exemption possible. There was patently no excessive burden on the CCG such as to suggest requests had been submitted vexatiously with the purpose of harassing.
39. The Commissioner acknowledges the CCG's arguments that it was investigating a complaint at the time the requests were received, and that it appeared the complainant was conducting his own investigation. He further acknowledges the CCG's general explanation regarding CCG/0618. However, the CCG should note that when responding to requests, it is not for the public authority to determine why an applicant wants the information requested, nor to pre-empt what it may be used for.
40. **CCG/0618** related to a letter sent to the complainant on 28 January 2014 (dated 27 January 2014). The complainant had submitted a formal complaint to the CCG on 27 January 2014 relating to how his previous concern about the CCG's Lead GP CPD had been dealt with. The complainant was therefore trying to establish if the response dated 27 January 2014 was only elicited once the complaint had been made.
41. Although the Commissioner acknowledges that this request relates specifically to a response sent to the complainant on 27 January 2014, and is of no benefit to a wider audience, he does consider that it has a serious purpose, in that the complainant is entitled to know if his concerns had been taken seriously and were being dealt with appropriately. If the letter was only sent because he had made a complaint, this would indicate that no action was being taken about his concerns at that time.

42. The Commissioner has taken into account the context and background to the requests. He notes that the first two requests were made in quick succession but that a month elapsed before the third and fourth requests were made.
43. He considers that all the requests are linked to the subject matter of a previous FOIA request and a complaint made to the CCG about the veracity of that response. Therefore, the Commissioner does not consider that taken as a whole this could be described as a campaign and therefore a burden on the public authority and it was inappropriate to issue a 'blanket' refusal on the basis of section 14(1).
44. Having taken all the circumstances into account the Commissioner is minded to find that the CCG has incorrectly applied section 14(1) of the FOIA to all of the requests.
45. He has balanced the purpose and value of the requests against the detrimental effect on the public authority and is satisfied that CCG/0644 does have serious purpose and value in that it relates to supporting evidence for a complaint investigation. The subsequent requests made stemmed from the response provided to CCG/0644 and therefore continue to have serious purpose and value. The Commissioner has weighed this against the burden on the CCG and considers that allegations of wrong-doing, whether founded or not, give significant weight to the purpose and value of a request.
46. Accordingly, the Commissioner finds that section 14(1) has been applied incorrectly in this instance.

Right of appeal

47. 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

48. 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.
49. 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

Annex

Request received 29 January 2014 (Ref: CCG/0644)

"Please supply copies of any and all correspondence since 29 October 2013 irrespective of the medium such was conducted in, received by or sent by Ceri Jacob or Lisa Levy, to or from Dr S, or, to or from any other officer of HCCG, where such correspondence in any part concerned Dr S's role in connection with CPD Master Class activities or concerned in any part our correspondence with HCCG.

Note the above is deemed to encompass also any covering letters or covering emails where copy of Ceri Jacob's correspondence to or from us was supplied by her to Dr S or any other member of staff at WLMC.

Please also provide copies of any emails (including date and time of such) or correspondence exchanged between Ceri Jacob and Lisa Levy where it relates to correspondence or telephone calls received from us or reply to us.

We are confident that HCCG's servers will retain copies of the above.

If our correspondence has been copied to Dr S without our permission such is a clear breach of HCCG's published policy of the Data Protection Act. If Ceri's responses to us have been copied to Dr S without his name being included within those letters' circulation list such is quite visibly an attempt to conceal from us that Dr S has been copied in"

Request received 3 February 2014 (Ref: CCG/0618) - fulfilled

"The request is asking in reference to HCCG letter dated 27 January 2014:

- i. What is the file creation date and time of the Microsoft Word 2010 Document file (i.e. Ceri's letter dated 27 January) used to produce that PDF file?*
- ii. Where was that Microsoft Word Document produced?*
- iii. Where was the PDF file produced?"*

Request received 6 March 2014 (Ref: CCG/0643)

"Please supply to us copies of all document records pertaining to fulfilment of the 0417 FOI application.

The above is deemed to include copies of any emails sent (other than by us) by your unit concerning that application; any emails received by your unit concerning that application and any records kept by your unit of telephone communications concerning that application."

Request received 12 March 2014 (Ref: CCG/0652) – fulfilled

"Please disclose to me copies of all emails and records held by your unit pertaining to FOI 0618 where they identify the HCCG officer(s) who was approached by your unit for supply of the information requested by your (FOI Team).

Please disclose to me copies of all emails or records held by your unit pertaining to FOI 0618 where they identify the HCCG officer(s) who instructed your unit (FOI Team) not to pursue fulfilment of that requested and informed you (the FOI Team) that HCCG would be fulfilling that request themselves via the complaint team."