

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2014

Public Authority: Calderdale & Huddersfield NHS Trust

Address: The Royal Infirmary
Lindley
Huddersfield
HD3 3EA

Decision (including any steps ordered)

1. The complainant has requested a further less redacted copy of a report CFCHFT 01/1013 – First Ref NYRT 11/00158. Calderdale & Huddersfield NHS Trust (the Trust) had previously provided a redacted copy and the complainant had questioned the redactions. The issue was brought to the Commissioner and a decision issued on 12 August 2013 under reference FS50491650. This request was refused by the Trust on the grounds that section 14(2) applied; that the request was a repeated request. The Commissioner considers that the FCA's application of section 14(2) was correct. The Commissioner does not require any steps to be taken.

Request and response

2. On 17 September 2013, the complainant wrote to the Trust and requested information in the following terms:

"FOI Request 1712 following FOI Request 1294 – 'I am writing to formally request that you look again at my FOI request, mentioned above, on the grounds that circumstances have changed, which I believe would affect whether further information could be released.

I am aware that one of the individuals, (name redacted) being a key component of the above mentioned report and its investigations, has now been dismissed. And this fundamentally changes some criteria on which you based your decision to redact key areas of the report as supplied to me.

I trust you will now be able to now supply me with an even less redacted copy of the report in so far as references to (name redacted) are concerned.'

3. The Trust responded on 2 October 2013. It stated that the request was repeated and therefore it applied section 14(2).
4. Following an internal review the Trust wrote to the complainant on 18 November 2013. It upheld its previous decision that section 14(2) applied.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant believes that the circumstances have changed and therefore a further less redacted copy could be provided.
6. The Commissioner notes that the section 40 arguments have been previously investigated in the decision notice FS50491650 and has therefore focused solely on whether the request was repeated.
7. The Commissioner has therefore had to consider whether the exemption in section 14(2) applies to the request or whether the Trust is under a duty to respond to the request.

Reasons for decision

8. Section 14(2) of the Act 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 for that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request".

9. Requests can be refused on the basis of section 14(2) if:
 - It is made by the same person as a previous request;
 - It is identical or substantially similar to the previous request; and
 - No reasonable interval has elapsed since the previous request.
10. The Commissioner has therefore considered each of these aspects in turn.

Are the requests made by the same person?

11. The Commissioner notes that the request is made by the same person.

Is the request identical or substantially similar to the previous requests?

12. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to the request, even if the wording of the request is not identical.
13. In this case, the wording of the previous request is accepted as substantially the same but the complainant claims that the scope of the information has changed as one of the individuals mentioned in the report has now left the employment of the Trust.
14. The previous request concluded with decision notice FS50491650, which considered the exemption for information that constitutes the personal data of third parties. The Commissioner found that in the circumstances the data subjects would not have expected full details of the report to be disclosed into the public domain.
15. The Trust has considered whether the scope of the information has changed with the changed employment status of a person named in the report and whether the change is significant. They have found that there is no material difference which may permit this information to now be released.
16. The Commissioner has considered the arguments from both the complainant and the Trust and finds that the employment status of a person named in the report does not materially affect the scope of the information. Therefore this request can be considered the same as the previous request.

Has a reasonable interval elapsed since the previous request?

17. What constitutes a reasonable interval will depend on the circumstance of the case including how likely the information is to change, how often records are updated and any advice previously given to the requester.
18. In this case, the interval between the requests was 11 months (November 2012 to September 2013.) but the interval from the outcome of the first request (the decision notice dated August 2013) to the second request was one month. The length of the interval is immaterial as the complainant believed that the circumstances had changed to allow a less redacted copy of the report to be provided. This was disputed by the Trust and upheld by the Commissioner.

Has the Trust previously complied with a request for information?

19. The next question which the Commissioner must consider is whether the Trust has previously complied with a previous substantially similar or identical request. In this case the Trust did respond to a previous substantially similar request although it did not provide all the requested information. This resulted in the complaint to the Commissioner and the Commissioner upholding the application of the exemption under section 40 in his decision notice. The question therefore is whether a refusal or a part refusal to a request can be considered to be the Trust having 'complied' with a previous request.
20. The Commissioner considers that the term 'previously complied with a request for information' refers to whether an authority has responded to the previous requests by either providing information or by issuing a refusal notice. In this case the Trust had responded to a previous request albeit that the complainant did not necessarily agree that the response complied with his rights under the legislation.
21. The Commissioner therefore considers that in this case the Trust has previously complied with the previous request despite the fact that not all the information was provided in response to that request.
22. Taking into consideration the above, the Commissioner considers that the Trust correctly applied the exemption for repeated requests at section 14(2) of the FOIA.

Right of appeal

23. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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
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