

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 September 2016

**Public Authority:** East of England Ambulance Service NHS Trust

**Address:** Whiting Way

Melbourn

Royston

SG8 6NA

### Decision (including any steps ordered)

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1. The complainant has requested information about particular tribunal hearings and particular companies that the Trust may use. The East of England Ambulance Service NHS Trust ('the Trust') considers the request to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious and that the Trust is not obliged to comply with it. The Commissioner does not require the Trust to take any steps.

### Request and response

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3. On 22 July 2015, the complainant wrote to the Trust and requested information in the following terms:

*"In relation to the "misconduct", "bullying" and "collusion" that was highlighted at various hearings / tribunals in the previous request I made, I would like to know:*

1. *What was the total cost to the Trust / taxpayer of providing legal advice and representation at the tribunal hearings in September 2006 and May 2007 relating to the conduct of Mr Leaman and [Individual 2] and any subsequent compensation paid to the plaintiff(s).*
2. *Does the Trust currently use any companies that employ Mr Leaman after he left last year?"*

4. The Trust responded on 26 August 2015. It refused to comply with Q1 of the request. It said that to do so would exceed the appropriate time/cost limit provided under section 12 of the FOIA. The Trust answered the second question.
5. Following an internal review the Trust wrote to the complainant on 25 November 2015. It said it had identified some information relating to 'the plaintiff' but requested clarification about the identity of this individual. The Trust said it holds no further information within the scope of the request. On 22 February 2016, the Trust confirmed that it could locate no further relevant information and that to search through its offsite storage facility would exceed the cost/time limit under section 12 of the FOIA.
6. Having reconsidered the request during the Commissioner's investigation, the Trust told the Commissioner that it now considers the request to be vexatious under section 14(1). It communicated this new position to the complainant on 10 August 2016, confirming, somewhat inconsistently, that it was refusing to comply with the request under section 14(1) but that it did not hold information relating to Individual 2 referred to in the request.

## Scope of the case

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7. The complainant contacted the Commissioner on 7 April 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focused on the Trust's application of section 14(1) to the request.

## Background

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9. The Trust has told the Commissioner that it appears to the Trust that the complainant's concern stems from his dispute with the Trust's senior managers and those of its predecessor organisation, and that the complainant does not consider this matter to have been fully concluded. The dispute concerns a disciplinary process to which the complainant and a senior manager were subject. The Trust is of the view that the complainant considers that the senior manager was treated more favourably than he was.

## Reasons for decision

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10. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
11. The term “vexatious” is not defined in the FOIA. 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 requests. In short they include:
  - Abusive or aggressive language
  - Burden on the authority
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance
12. 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.
13. The Commissioner’s guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that the background and history of the request may be relevant here but has nonetheless considered all the circumstances of the case.
15. In its submission to the Commissioner, the Trust said that the request is one of a series of requests from the complainant that relate to an original request for information that the Trust received on 23 December 2012.
16. The request of 23 December 2012 concerned the senior manager referred to in paragraph 9, who had been employed by Essex Ambulance Service. (The Trust has explained to the Commissioner that Essex

Ambulance Service was one of three services that had merged in 2006 to form the current East of England Ambulance Service.)

17. The complainant was not satisfied with the Trust's response to this request, which the Trust sent on 24 January 2013. Correspondence between both parties then followed, throughout 2013. The Trust has provided the Commissioner with copies of this correspondence. It is made up of the complainant's queries about the response sent in January 2013, a further five associated FOIA requests (on 22 February, 20 March, 31 May, 5 September and 2 December 2013), requests for reviews and emails chasing a response from the Trust, and the Trust's response to those queries, requests and requests for reviews.
18. Correspondence between the complainant and the Trust continued throughout 2014; again including the complainant's queries about responses he received from the Trust, three further FOIA requests (16 January, 19 June and 19 September 2014), requests for reviews and emails chasing a response from the Trust. In correspondence of an unknown date in October 2014, the Trust refers to section 14 of the FOIA. In correspondence dated 12 March 2015, the Trust confirms that it will apply section 14(1) to any further correspondence on the same subject matter. It also confirmed however that it would address the complainant's queries submitted before 19 June 2014 but which remain unanswered.
19. On 17 June 2015, the Trust provided the complainant with an internal review of its response to one of the complainant's separate requests. On 22 July 2015, the complainant submitted the request that is the subject of this notice.
20. In its original submission to the Commissioner dated 18 July 2016 the Trust argued that at the point of its correspondence to the complainant dated 22 February 2013, it had addressed each of the questions he had asked in his original request of 23 December 2012. In the Trust's view this should have been the end of the matter.
21. The Trust summarised the subsequent correspondence as above; namely as follow on questions about the information he received, and with which he was dissatisfied. The Trust referred to the separate FOIA requests, at least some of which included repeat questions about the original December 2012 request, which concerned the cost of particular contracts.
22. The Trust said that the complainant did not accept an internal review that it provided on 15 January 2014 (regarding a separate request) and that the complainant then went on to ask further questions about the

information held on IT equipment and about information relating to an investigation Deloitte had undertaken.

23. The Trust confirmed that in the further review of 12 March 2015, it had referred to section 14(1) because it considered that the complainant's FOIA request could be considered 'futile'. This was because the Trust had paid for an external and independent investigation (by Deloitte) and an audit to be completed. It considered that, through this investigation, the Trust had fully responded to the complainant's initial concerns. It had advised the complainant of other avenues through which he could explore his concerns, such as through an employment tribunal.
24. At this point in the Commissioner's investigation, the Trust's position was that it does not hold some of the information requested on 22 July 2015, and was relying on section 12(1) with regard to the remainder. However, it told the Commissioner that it considered that it should have relied on section 14(1) or section 14(2) (repeat requests). As referred to above, the Trust then confirmed to the Commissioner that it is now relying on section 14(1) and has communicated this new position to the complainant.
25. In a subsequent submission to the Commissioner dated 9 August 2016, the Trust has explained that, in its view, the complainant has refused to accept the responses he has received from the Trust. He has repeatedly asked for clarification and on many occasions has added a new request for information. The Trust says it logged all the requests and endeavoured to respond to them. The Trust says that it considers that the complainant has continued to reopen issues that have been resolved. It says that the correspondence provided to the Commissioner is evidence of this and suggests that the complainant has tried to reopen particular matters around the time when the Trust has employed a new senior manager or a new chief executive.
26. The Trust has told the Commissioner that dealing with the complainant's requests has had a significant impact on the Trust and its workload and has caused a disproportionate and unjustified disruption to its FOIA team. It has reviewed the information the complainant has received and notes that it is now over ten years old and that the individuals concerned left the Trust a long time ago. In addition, the Trust says that a lot of information regarding the then senior manager of the Essex Ambulance Service – Mr Leaman – is in the public domain eg on the BBC News website.
27. The Commissioner has noted that in its revised response to the complainant of 10 August 2016, the Trust has acknowledged that its responses to his requests were fragmented and failed, on occasions, to comply with section 10 of the FOIA (time for compliance). The Trust

apologised to the complainant for this. It explained that it found it difficult to locate information relating to events that took place prior to the new Ambulance Service NHS Trust being established, and during its first two months. The Trust acknowledged that it should, however, have alerted the complainant to this situation. The Trust also acknowledged that it should have informed the complainant earlier in its correspondence with him that it was relying on section 14(1), and refused to respond to any further requests regarding the matter in question – that is, a particular employment tribunal that occurred when Mr Leaman was employed by the then Essex Ambulance Service.

28. The Trust says that, through its internal policies and procedures, it would like to understand the complainant's concerns and find a resolution. However, it is not confident that the complainant is prepared to move forward. The Trust notes that the complainant's correspondence and requests concern matters from 15 years ago. It says that it is proving to be more and more difficult to address the complainant's concerns as organisational memory has been lost and relevant senior managers no longer work for the Trust.
29. The Commissioner has considered the Trust's submissions and all the circumstances of this case. The complainant appears to have a concern about a particular disciplinary procedure to which he was subject, and it is from this that his subsequent correspondence and FOIA requests have stemmed. The Commissioner notes that the Trust commissioned an independent investigation into the complainant's concerns and considers that this investigation addressed those concerns. It advised the complainant that an industrial tribunal would be an appropriate method through which he could pursue the matter further.
30. The complainant has chosen to use the FOIA as a means to pursue the matter and the Commissioner does not consider this is an appropriate use of the Act. The Trust responded to the complainant's initial request, submitted to it in December 2012, but has continued to respond to the complainant's further associated queries and requests over the following two and a half years. The Commissioner considers that, by the time it received the request of 22 July 2015, the Trust had sufficient grounds for categorising that request as vexatious under section 14(1) of the FOIA, because there was evidence of unreasonable persistence and because of the unjustified burden the request caused to the Trust.
31. The Commissioner considers that the purpose and value of the request has diminished over time. The Trust has undertaken an independent investigation into the complainant's original complaint and, beyond the complainant's own interests, there does not appear to be any wider public interest in the matter that is the subject of the request. The impact on the Trust of complying with this request would therefore be

disproportionate to its value. In the Commissioner's view, the Trust is therefore correct to have finally applied section 14(1) to the request, on 10 August 2016.

## Right of appeal

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32. 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)

33. 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.
34. 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**