

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2017

Public Authority: University College London Hospitals NHS
Foundation Trust

Address: 2nd Floor, Maple House
149 Tottenham Court Road
London
W1T 7NF

Decision (including any steps ordered)

1. The complainant has requested information relating to the role of the University College London Hospitals NHS Foundation Trust (UCLH) in relation to a trachea transplant operation. UCLH considers the request to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that UCLH was not entitled to refuse to comply with the request under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which does not rely on section 14(1) of the FOIA.
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. The complainant wrote to UCLH enclosing a picture of a patient with a UCLH doctor and a Professor, and requested information in the following terms:

*"1 – Why and in which capacity did [name redacted] travel to Careggi in regard to this operation?
2 – Who recommended this Careggi operation to NHS so it was paid by it?
3 – When did [name redacted] discuss this patient's case with the multidisciplinary team at UCLH prior to the operation's approval, and who was present from the UCLH side?"*
6. UCLH responded on 14 February 2017 and refused to provide the requested information, citing section 14(1) of the FOIA as its basis for doing so.
7. Following an internal review, UCLH wrote to the complainant on 13 April 2017 maintaining its original position.

Scope of the case

8. The complainant originally contacted the Commissioner on 14 February 2017 to complain about the way his request for information had been handled. The Commissioner responded on the 7 March 2017 to explain that before accepting complaints, she requires public authorities to be allowed the opportunity to respond to any complaints the requester may have about the way in which their request was dealt with. The Commissioner therefore requested that the complainant contact UCLH again, asking it to review the handling of his request.
 9. The complainant contacted the Commissioner again on 13 April 2017, following the outcome of the internal review, to complain about the way his request for information had been handled.
 10. The Commissioner considers the scope of this case is to determine whether UCLH has correctly applied section 14(1) of the FOIA to the request for information.
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Reasons for decision

Section 1 – general right of access

11. Section 1(1) of 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.”*

Section 14 – vexatious and repeat requests

12. Section 14(1) 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.”* There is no public interest test.
13. The term ‘vexatious’ is not defined in the FOIA. The Upper-Tier Tribunal considered the issue of vexatious requests in the case of the Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as *“manifestly unjustified, inappropriate or improper use of a formal procedure”*.
14. The Dransfield case identified four factors that may be present in vexatious requests:
- the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request.
15. 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).
16. 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.

17. The Commissioner has identified a number of 'indicators' which may also be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests¹. In short they include:
- abusive or aggressive language
 - burden on the authority
 - personal grudges
 - unreasonable persistence
 - unfounded accusations
 - intransigence
 - frequent or overlapping requests; and
 - deliberate intention to cause annoyance.
18. 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.
19. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request when this is relevant. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.

UCLH's representation

20. In its submission to the Commissioner, UCLH acknowledges that the request is not in itself vexatious. However, it has gone on to explain that because of its existing knowledge of the complainant, the request has to be considered in the context of the intended use of any information provided.
21. By way of background to the issue and in order to provide context and history, UCLH has stated to the Commissioner that the complainant is known to it through a previous request and through his public blog in which he discusses the subject matter requested in a negative way. It explained that the complainant submitted a complaint to the Information Commissioner's Office about the previous request because he stated that UCLH had not disclosed the most recent version of the information requested. UCLH has gone on to explain that the complainant blogs about it releasing deliberately misleading information. UCLH stated that the Information Commissioner previously found in favour of UCLH;

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

however UCHL stated that this was not included in the complainant's blog.

22. UCLH believes that the complainant is deliberately attacking individuals who are connected with the research and clinical trials he blogs about, including members of UCLH's staff. UCLH considers that the complainant is deliberately harming the professional reputation of the clinicians he discusses in the blog, for which the complainant has recently been taken to court and found guilty of libel.
23. UCLH recognises that the FOIA is person and purpose blind; however, it considers that, because of the nature of the request, it is impossible to ignore the intention behind it and therefore the complainant's purpose has to be considered when responding to the request. UCLH has also considered whether the complainant's use of the FOIA to try to discredit UCLH is the correct use of the Act.
24. Furthermore, UCLH states that its assertion that the complainant intends to continue his attack on the professional reputation of one of its members of staff is underlined by the tone of the wording of the communication in which the request was made. UCLH has explained that although it is difficult to infer tone from an email, the words chosen often convey this. UCLH are of the view that the tone of the wording of the communication in which the request was made implies sarcasm.
25. UCLH has stated that the member of staff to whom the request was submitted is a director of a non-clinical service and would be unlikely to know the person in the image that accompanied the request for information. UCLH therefore believes that his reference to the Professor reinforces its assertion that the complainant's intention is to further criticise and discredit both the Professor in the image, and UCLH.
26. UCLH has confirmed that the research conducted by the Professor is the subject of the complainant's blog, in which he discusses the clinicians who carry out such trials and research in pejorative terms.
27. UCLH has stated that such treatment of individuals is distressing for the people involved and it does not think that its members of staff should be exposed to it. In addition, UCLH believes that there is deliberate intent to frustrate the work being carried out as the requester's blog is now having a detrimental effect on the Professor's clinical trial, in so much that other healthcare facilities are not recommending patients to be included in his trial and patients themselves have opted out as a result of the claims made by the requester in his blog.

28. UCLH has stated that since responding to the request and the internal review, the complainant has continued to contact it on the same subject matter and that he would report about it on his website.
29. UCLH understood that the complainant had promised not to publish any further comment about the subject matter covered by the information requested until the conclusion of a special inquiry into regenerative medicine. However, UCLH has stated that the complainant did publish further comment, which led to him being asked to refrain from doing so.
30. UCLH believes that the complainant's continued contact with it, using words that suggest a sarcastic tone, is designed deliberately to provoke it.
31. Taking into consideration both its original view at the time of the complainant's request and the nature of his more recent communication with it, UCLH has stated that it continues to regard this request as vexatious and will treat any future requests on the same subject matter, or mentioning the member of staff, in the same way.

The complainant's representation

32. The complainant explained in his initial correspondence to the Commissioner that the information he has requested from UCLH is part of a scandal.
33. In response to the Commissioner's request that the complainant contact UCLH again, asking it to review the handling of his request, he stated that he had involved the UCLH's internal review official from the very beginning, when he submitted his FOIA request. The complainant explained that he did this because his earlier attempts to obtain the most basic information on another case about trachea transplants scheduled at UCLH were diverted by "lies and dishonest evasion from the side of UCLH and from the internal review official himself". The complainant went on to explain that even the Commissioner's 'interference' did not help him. He stated that UCLH gave him the wrong document, which did not contain the information he believed it to be hiding. The complainant stated that he eventually obtained the information previously requested from somewhere else. The complainant stated that, in the end, the UK Research Ethics Commission suspended that clinical trial because of his reporting.
34. The complainant went on to explain that his recent inquiry into patient-abusive practices of UCLH doctors abroad was dismissed as vexatious, and the internal review official had his part in it. The complainant stated that there was no point in him wasting his time writing to the internal review official because, like previously, he will first ignore his emails,

then misunderstand them for weeks and months and then lie to him again and many months later when the Commissioner eventually interferes, the internal review official will give him something he doesn't need anyway.

35. The complainant stated that he was already able to prove quite a lot, and only needed UCLH's confirmation as well as some minor details. The complainant referred to a report he has published relating to *"a young British woman (who) was misled by a team of UCLH doctors, which eventually led to her death in the hands of that ruthless UCL honorary professor [name redacted]"*.
36. When writing to the complainant about the focus of the investigation and whether there were any matters other than UCLH's reliance on section 14(1) of the FOIA that he believed we should address, the complainant advised us that his questions remain. He stated that he was able to obtain some of the information he had requested from UCLH from a witness, but he insisted that UCLH confirmed it all officially.

The Commissioner's view

37. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
38. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
39. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
40. The Commissioner considers that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden.
41. The Commissioner has reviewed the previous decision notice (FS50634146) that both UCLH and the complainant have referred to in their submissions. In the previous decision notice, the complainant had requested information concerning a consortium trial. UCLH released some information. However, the complainant disputed that UCLH had

released all the relevant information that it held. The Commissioner's decision in the previous case was that, on the balance of probabilities, UCLH had disclosed all the relevant information that it held at the time of the request and therefore complied with its obligations under section 1(1) of the FOIA.

42. In terms of UCLH's reliance on section 14(1) to refuse the latest request, the Commissioner has assessed the value of the information requested and whether it was reasonable to ask for it. She recognises that the complainant has a genuine concern about the research and clinical trials that are the subject of this request and his blog. She also accepts that there is a wider public interest in the funding of medical research and clinical trials. The Commissioner considers this would lend weight to the view that it was reasonable to make the request.
43. It is therefore not unrealistic to expect that individuals who have a specific interest in medical research and clinical trials may use their rights under the FOIA to seek access to relevant information where, in all the circumstances, it is reasonable to do so.
44. The Commissioner has also considered the context and history in which the request was made, and it would appear that the complainant has only made one previous request for information to UCLH, which is described in paragraph 41 above.
45. The Commissioner recognises UCLH's view that the complainant blogs about the subject matter in a negative way. She has also noted UCLH's view that the wording of the communication in which the request was made, and the further communications from the complainant following the internal review outcome, implies sarcasm. The Commissioner's view however, is that those holding a public position should be accustomed to a certain amount of criticism, albeit she accepts that there is obviously a boundary of what is or is not acceptable. Having considered the tone of the request, the Commissioner accepts that the wording used by the complainant could imply sarcasm. However, in this case, she does not consider it has crossed the boundary of being unacceptable.
46. Furthermore, the Commissioner has done some further research with regard to the specific surgery the complainant refers to in his request and has considered all the circumstances of the case in reaching a decision. In her view, UCLH has failed to demonstrate that the request is manifestly unjustified, inappropriate or an improper use of a formal procedure. Therefore, the Commissioner's decision is that the College is not entitled to rely on section 14(1) of the FOIA to refuse to comply with this request.

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

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