

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 July 2020

Public Authority: Parkside Surgery
Address: Alfreton Primary Care Centre
Church Street
Alfreton
DE55 7AH

Decision (including any steps ordered)

1. The complainant requested information from Parkside Surgery, Alfreton ("the surgery") about additional hours of work, claimed for by two of the surgery's partners. The surgery, which had previously provided him with some related information, refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious under section 14(1) of the FOIA, and the surgery was correct to refuse to respond.
3. The Commissioner does not require the surgery to take any steps.

Request and response

4. On 5 November 2019, the complainant wrote to the surgery and requested information in the following terms:

"[redacted name] has made reference to specific clinics that needed to be covered whilst [redacted] was on leave of absence. These clinics were listed as: '6 on call sessions, 2 clinical sessions and 3 Tuesday evening sessions.'

Please provide information as to the date of the above clinics and which clinician/s saw these patients and on which dates."

5. On 3 December 2019 the surgery sent a response. It stated that: "*since we have had multiple requests for info on the same matter, we are treating that request as vexatious*".
6. On 10 December 2019, the complainant sent an email to the surgery, stating that, in order to be "*open and honest*", it should provide him with the information he had requested. The complainant commented in the email that the surgery had been ignoring his recorded delivery post.
7. On 12 December 2019, the surgery sent the complainant a letter by post, confirming that it considered the request to be vexatious under section 14(1) of the FOIA. The letter stated: "*we have already replied to similar requests by email on a number of occasions*".
8. This letter appears to have crossed with a further email from the complainant to the surgery dated 13 December 2019, asking for an internal review.
9. No further response was issued by the surgery.

Scope of the case

10. The complainant contacted the Commissioner on 23 January 2020 to complain about the way his request for information had been handled.
11. On the basis of the evidence available, as set out above, it appears that the surgery carried out an internal review after being asked to do so by the complainant in his email of 10 December 2019, and provided him with the outcome in the letter dated 12 December 2019, confirming its position that the request was vexatious.
12. The complainant has questioned the independence of this internal review. However, while it is best practice for a public authority to be able to offer an independent internal review, if asked, into the handling of a request for information, this is not statutory, and as such is not a pre-requisite for the Commissioner to be able to accept a complaint under section 50 of the FOIA.
13. This notice covers whether the surgery correctly refused the request of 5 November 2019 as being vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious request

14. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
15. However, 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.
16. 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*¹ (“Dransfield”). The Tribunal commented that “vexatious” could be defined as being the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*”
17. The Tribunal’s definition therefore established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
18. *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.
19. 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

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunaldecision-07022013/>

there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (paragraph 45).

20. The Commissioner has published guidance on dealing with vexatious requests², 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.
21. 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”.

22. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it.

The background to the request

23. By way of background, the surgery has explained that during the absence of one of the practice doctors, who was at that time still a partner in the surgery, it had been necessary to arrange cover. It explained that *“as part of this cover, payments were made to the remaining partners... at a standard hourly rate in lieu of arranging an external party to cover the work.”*
24. A large amount of correspondence ensued throughout August, September and October 2019, mainly between the complainant and one of the remaining partners. In summary, it shows that a disagreement developed over whether the two remaining partners had adhered to the terms of the partnership agreement, including whether they were entitled to pay themselves for the additional work. The complainant considered that he had not been kept informed about the “locum” work that was done during his absence, and in particular, sought detailed

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

information about the precise hours that had been worked by the two partners and whether they had seen patients at these times.

25. This led to the complainant making a formal request for information on 5 November 2019, as set out at the beginning of this notice.

The complainant's position

26. Whilst the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1), the Commissioner accepts that complainants may wish to advance their own arguments as to why a request was not vexatious.
27. The complainant explained that, while he had engaged in some other informal correspondence with the surgery, the request under consideration was only his second formal request, and had been necessary because the surgery had been "*resistant to being open and honest about... locum payments*". He wished to gain "*an understandable and reasonable clarity*".
28. The complainant also commented that "*any related irritation is only due to... intransigence and [the surgery's] frustration that [he] would not leave it alone*".
29. The complainant commented further that he did not think it unreasonable to seek a full and thorough understanding of the surgery's position, and that leaving matters unresolved created a "*wider concern about... probity*".
30. The complainant denied that the request would cause either disproportionate or unjustifiable levels of distress, disruption or irritation as the information requested is "*both simple and easy to provide*". He suggested that it would take perhaps 10 minutes to source.
31. As previously explained, to support his position, and by way of background, the complainant provided copies of some correspondence he had had with the surgery.

The surgery's position

32. The surgery, as previously stated, also provided the Commissioner with copy correspondence. It considers that this supported its position that the request of 5 November 2019 was vexatious.
33. The surgery contends that the complainant contacted it frequently and appeared to be "*requesting additional information at each request, in an attempt to disprove that additional work had been undertaken on his behalf while on leave.*"

34. The surgery considers that the complainant had already been provided with much related information, although it has not contended that the request was a "repeat" request as such. It notes that every time it responded to the complainant's questions, he wrote again very quickly, either challenging its response or asking for further information.
35. It stated that it had considered the indicators of vexatiousness which are set out in the Commissioner's guidance, referenced previously. It wished the Commissioner to consider the following indicators as being relevant in this case:
- Abusive or aggressive language (in this case, the surgery felt this applied to the tone of the correspondence, rather than the language itself);
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Frequent or overlapping requests
36. The surgery also emphasised the level of stress suffered by one of its partners caused by dealing with the correspondence from early July onwards, such that the partner felt he had no option but to begin automatically deleting emails from the complainant.
37. The surgery's position is that the criteria have been fulfilled for the request correctly to be considered vexatious.

The Commissioner's decision

38. The issue for the Commissioner, in this case, is not whether the information being requested by the complainant is in itself burdensome, in the sense of being voluminous or complex to retrieve. It is whether responding to the request would place a disproportionate burden on the surgery in all the circumstances of the case.
39. To determine whether the burden would be disproportionate, she has considered the indicators of vexatiousness, above. She has also considered the motive of the requester, and the value and purpose of the request itself, as considered by the Upper Tribunal in *Dransfield*.
40. The Commissioner has noted that the request to the surgery on 5 November 2019 was at least the twentieth piece of correspondence from the complainant since the beginning of July 2019 which related to the additional work done by the two partners. The complainant has argued

that he made only two formal requests for information under the FOIA, but this is not, of itself, relevant. A public authority would rightly consider that any request for information it received may place obligations on it under the FOIA, whether or not the Act is specifically mentioned, and would be likely to feel that it had an obligation to respond to questions.

41. However, where a requester is having difficulty in obtaining a clear answer on a particular subject, this can, in some cases, explain why he or she feels it necessary to ask further questions on the same topic. This is what the complainant has argued here: he admits to not "*leaving it alone*" but says that this was due to the surgery's intransigence.
42. The Commissioner has considered whether the surgery failed to provide clear answers to the complainant's earlier correspondence. She notes that he asked for "*details regarding the additional sessions*" in an email dated 4 July 2019. The focus of his questions then moved to establishing whether or not patients had been seen at the "sessions", and wanting proof of the additional hours worked by the two remaining partners, including details of their logging on and off the relevant systems.
43. The Commissioner considers that the complainant became somewhat unreasonably persistent in his demands for proof of the hours worked, and whether or not patients had been seen during these additional hours. It had been explained to him, at an early stage, that the money which the partners paid to themselves was intended as a nominal sum to cover 16 additional hours' work each. However, with reference to his initial question about "details" of the sessions, she notes that it was not until 28 October 2019 that the complainant was informed that the partners had covered eleven specific sessions as part of their extra work. Arguably, this information could have been provided to him as part of a fuller response, earlier on.
44. On considering the correspondence, however, the Commissioner considers that there are indicators that the complainant tipped over into an unreasonable level of persistence, and a level of aggression. This is indicated by his use of phrases including "*And show me your proof?*" (email of 16 August 2019) and "*Please explained [sic] exactly what you think this proves?*" (email of 22 August 2019).
45. The Commissioner also notes that the complainant's stated motive in seeking information from the surgery is that he thinks the partners breached the terms of the partnership agreement by paying themselves additional money for the work that they did, and by not keeping him informed, which he views as matters for potential litigation. While the complainant has referred to broader issues of probity (the Commissioner has considered this further, later on in this notice), she is satisfied that

this is evidence of an essentially personal grudge, which can indicate vexatiousness.

46. She further considers that his tone was somewhat aggressive in respect of his allegations: *"If you choose not to [provide log-out details], then you are forcing me to take legal action to sue you for misappropriation of funds and breach [sic] of the Partnership Agreement regarding sharing all information. Such legal action would be costly, though I am confident that you would end up paying my legal fees. It is therefore your choice to be accommodating and open about providing information or risk the cost this will incur"* (email of 2 September 2020).
47. She has considered the fact that the complainant was not advised until the end of October 2019 that the partners had covered eleven specific sessions, despite him having asked for "details" at a much earlier stage. It is perhaps understandable that, on 5 November 2019, he then asked for further information about these sessions (the request which is under consideration in this notice). However, the Commissioner has considered this request both on its own merits, and in its broader context.
48. In his request, the complainant asked for the dates of the eleven sessions; and which partner saw patients at these sessions, on which date.
49. She considers that it is very likely that in making the request, as the surgery has suggested, he remained fixed on gathering evidence in support of his view that wrongdoing had occurred. She also considers that it was reasonable, by this stage, for the surgery to consider his requests to be frequent and overlapping, which can indicate vexatiousness.
50. Turning to the broader considerations in *Dransfield* – the motive of the requester, and the value and purpose of the request itself – as stated above, the Commissioner is satisfied that the request relates to an almost entirely personal dispute. However, she notes that the complainant argued that his request had inherent value due to broader concerns about probity. She has therefore considered whether disclosure of the requested information would shed light on whether the remaining partners may have behaved in such a manner as to cause wider public concern.
51. Amongst the purposes of the FOIA is to increase transparency and accountability to the public. However, in this case, the Commissioner considers that the explanations originally offered by the remaining partners, as to why they had made themselves additional payments, were sufficient to provide this transparency.

52. It is not a matter for the Commissioner to interpret any particular terms of the specific partnership agreement in this case, in order to form a view on whether its terms have been adhered to. In the absence of evidence about serious issues of alleged wrongdoing, such as would create wider public concern, that would be a matter for private litigation.
53. The Commissioner is aware that the complainant considered that, in order to obtain answers about the work carried out by the partners, he had no option but to keep asking questions. However, on balance, she is satisfied that the request, in the context of its history, placed a considerable burden on the surgery due to the frequent and overlapping nature of the earlier correspondence, and its tone and stated purpose.
54. She is not satisfied that there is a significant wider purpose and value in the information being requested, such as would outweigh this burden.
55. The Commissioner has therefore determined that the request of 5 November 2019 was vexatious and that section 14(1) provided that the surgery was not obliged to comply with it. She does not require the surgery to take any steps.

Right of appeal

56. 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

57. 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.
58. 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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