

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2023

Public Authority: Royal Surrey County Hospital NHS Foundation Trust

Address: Egerton Road
Guildford
Surrey
GU2 7XX

Decision (including any steps ordered)

1. The complainant has requested information about emergency preparedness. The above public authority ("the public authority") relied on section 14(1) of FOIA to refuse the request as vexatious.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 14(1) of FOIA to refuse this request.
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, that does not rely on section 14(1) of 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. On 24 October 2022, the complainant wrote to the public authority and made a request for information in several parts. The full request is included at the end of this notice.
6. The public authority responded on 4 November 2022. It refused the request as vexatious – a stance it upheld following an internal review.

Reasons for decision

7. A public authority is entitled to refuse a request that is vexatious. A vexatious request is one that is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
8. The public authority noted that the complainant had submitted three previous requests on the same topic – which it considered to be burdensome. In its internal review, it stated that:

“Whilst the information requested was not for direct duplicates there was overlap and placed in context of the three previous requests from May to August, does contribute to an aggregated burden.”
9. In a further submission to the Commissioner the public authority commented that:

“Although the Trust acknowledges and respects the importance of the subject matter that has been requested, which has been put to the test during the COVID Pandemic, together with the hospital declaring internal Operational Incidents, intermittently throughout 2022 and in December declaring a Critical Incident, the Trust considers these FOI requests to be a burden on the small team responsible for the answers and furthermore queries the motive of this individual, in the timing and frequency of the requests.”
10. The complainant denied that the requests overlapped, noted that he had deliberately staggered his requests to avoid overburdening the public authority and reiterated that he was seeking the information as part of a research project for an academic qualification – something he had explicitly mentioned in the request correspondence.

The Commissioner's view

11. In the Commissioner's view, the public authority has fallen considerably short of demonstrating that the request was vexatious.

12. The request referenced above is one of four requests the complainant has made over a period of five months – which is not an amount the Commissioner would normally consider excessive.
13. Whilst all four requests clearly relate to the same narrow topic, the Commissioner does not consider that they overlap each other. If the public authority feels that it has already provided some of the information that has been requested (or informed the complainant that the information was not held), it would be entitled to rely on either section 21 of FOIA to withhold that information or refuse that element of the request as repeated.
14. Finally, the Commissioner is not persuaded that the present request is burdensome. Most of the information relates to emergency preparedness plans which, by their very nature, should be easily accessible. For most of the elements of the request, the complainant is not seeking copies of particular documents, only to establish whether the public authority possesses such documents. On the face of it, that does not appear to be a request that should be difficult to answer.
15. The Commissioner is therefore not convinced that this request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress and is thus not vexatious. The public authority must therefore issue a fresh response to the request.

Other matters

16. Whilst the Commissioner has no power under FOIA to compel either to do so, he would encourage both parties to discuss the underlying matter directly to find a mutually agreeable way forward. This may be a case where FOIA is not necessarily the most appropriate route for the complainant to access the information he desires.
17. If the complainant currently intends to make further requests, the Commissioner considers that it may be more productive for him (the complainant) to explain his needs to the public authority and agree a realistic timetable for the provision of all the information – rather than continuing to make piecemeal requests via FOIA. The complainant would still retain the option of making a formal request for any information the public authority is either unwilling or unable to disclose.
18. The Commissioner would note that, whilst he has not found this particular request to be vexatious, that does not mean that further requests cannot be refused for this reason. An unwillingness (by either party) to take part in meaningful dialogue will form part of the Commissioner's considerations of any similar complaints in future.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

22. The request made on 24 October 2022 was as follows:

“Staff contact list

1. Any record of the existence of a current contact list of all hospital personnel which is available and is accessible to hospital administrators and staff of any Incident Coordination Centre. (Can be answered yes / no.)
2. The date(s) of the most recent update(s) of such a contact list. (Can be answered with a date or dates.)

“Mobilization and recruitment of personnel during an emergency or disaster

3. Any record of the existence of procedure(s) for the mobilization of existing on-duty and off-duty staff to meet surge capacity needs of clinical and support services in response to emergencies or disasters. (Can be answered yes / no.)
4. Any record of the existence of procedure(s) for recruitment and training of extra personnel and volunteers to meet surge capacity needs of clinical and support services in response to emergencies or disasters. (Can be answered yes / no.)
5. Any record of the existence of emergency rosters of staff who can be mobilised to meet surge capacity needs of clinical and support services in response to emergencies or disasters. (Can be answered yes / no.)

“Duties assigned to personnel for emergency or disaster response and recovery

6. Any record of whether all key personnel in any hospital incident management system for command, control and coordination in an emergency or disaster response have received training in incident management. (Can be answered yes / no.)
7. If such training is received then any record of whether training or an exercise has been conducted for all such key personnel at least annually. (Can be answered yes / no.)

“Well-being of hospital personnel during an emergency or disaster

8. Any record of the existence of designated spaces and available measures for hospital personnel to rest, sleep, eat, drink, observe faith-based practices and meet personal needs during an emergency. (Can be answered yes / no.)

9. Any record of for how long these measures can be sustained. (Can be answered in hours or days.)”