

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2023

Public Authority: Cardiff and Vale University Health Board
Address: University Hospital of Wales
Heath Park
Cardiff
CF14 4XW

Decision (including any steps ordered)

1. The complainant requested, from the Cardiff and Vale University Health Board (the Health Board), information ultimately relating to an employment dispute between the complainant and the Health Board.
2. During the Commissioner's investigation, the Health Board revised its position. It now relies on section 14(1) of FOIA (vexatious or repeated requests).
3. The Commissioner's decision is that the Health Board is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
4. He does not require any further steps as a result of this decision notice.

Request and response

5. On 28 and 31 March 2023, the complainant's representative and the complainant themselves respectively wrote to the Health Board and requested various information. Given the length and complexity of the request correspondence, the Commissioner will not quote the request in

full here. Instead, he will provide a broad overview of the request, as he considers that from the reader's perspective this will be more helpful.

6. The complainant's 31 March 2023 correspondence was a promised addition to the 28 March 2023 correspondence, thereby essentially 'completing' the request. In total, the correspondence comprised eight A4 pages.
7. As well as references to the complainant's employment dispute, the correspondence contains a mixture of new requests; clarified requests; references to previous requests; and questions that are not requests for recorded information.
8. Some of the requested information was about concerns submitted by third parties.
9. Part of the request relates to matters that have, in the period since the request, been addressed by the Commissioner in a separate decision¹.
10. One new request was for information shared about the complainant's actions and decisions; the Commissioner understands that the complainant is also seeking clinical logs and information about patient cases.
11. Some of the request related to a particular computer and the retrieval of emails.
12. The complainant emphasised to the Health Board that the requested information is highly relevant to their employment dispute, and without it their ability to obtain redress and defend themselves will suffer.
13. The complainant went on to request information about meetings and correspondence; concerns they had raised; and about certain policies.
14. They also requested information about a questionnaire; about a document disclosed as part of the complainant's employment dispute; about meta-data and the recipients of a particular document; and about some clinical experts.
15. The Commissioner notes that the request contains many hybrid elements that are likely to fall under more than one information access regime.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025669/ico-200454-f0t4.pdf>

16. The Health Board responded on 26 May 2023. Where it felt that the complainant was requesting their own personal data, it cited the UK General Data Protection Regulation and the Data Protection Act 2018.
17. The Health Board said that to the extent that the requested information fell under FOIA, it was the personal data of third parties and was exempt from disclosure under section 40(2) of FOIA.
18. Within its 26 May 2023 response, the Health Board also emphasised the number of requests from the complainant since May 2021; the amount of information already disclosed to the complainant; the Health Board's concern about perpetual requests from the complainant; and the burden of the complainant's requests.
19. On 7 June 2023 the complainant's representative asked the Health Board to review its position. The representative only disputed the Health Board's position under data protection legislation, not the FOIA exemption that the Health Board had cited at that time (section 40(2)).
20. Following an internal review, the Health Board wrote to the complainant on 16 June 2023. It maintained its position under data protection legislation; responded to some questions; and referenced a separate FOIA complaint case that was being considered by the Commissioner at that time².

Scope of the case

21. The complainant contacted the Commissioner on 30 May 2023 to complain about the way their request for information had been handled.
22. The complainant said that the Health Board was refusing to provide the requested information.
23. During the Commissioner's investigation, the complainant sent further emails setting out their concerns and explaining why they are seeking the requested information. The Commissioner has included some of the complainant's comments below (paragraphs 40 – 49) to give a sense of their concerns.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025669/ic-200454-f0t4.pdf>

24. During the Commissioner's investigation, the Health Board reviewed and clarified its position regarding the FOIA aspect of the request.
25. It explained that whilst the majority of the requested information falling under FOIA is personal information, the Health Board is refusing to comply with the request under section 14(1) of FOIA (the exemption for vexatious requests).
26. The Health Board has pointed out that whilst it did not specifically cite section 14(1) in its 26 May 2023 refusal, it did make comments about being unable to process the complainant's perpetual requests; the proportionality of complying with the request; and the burden of dealing with the request.
27. The Commissioner therefore considers that the scope of this case is to decide whether the Health Board is entitled to apply section 14(1).
28. He will not consider section 40(2) of FOIA, because the Health Board is no longer citing that exemption to refuse to disclose information.
29. For the avoidance of doubt, the Commissioner emphasises that it is not his role to investigate the complainant's concerns that are beyond his remit.
30. The Commissioner also emphasises that this FOIA decision notice will not address the data protection aspect of the complainant's request and complaint.

Reasons for decision

Section 14(1) – vexatious requests

31. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
32. Section 14 is an absolute exemption, not subject to the public interest test.
33. The word 'vexatious' is not defined in FOIA. However, as the Commissioner's guidance on section 14(1)³ states, it is established that section 14(1) is designed to protect public authorities by allowing them

³ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

34. FOIA gives individuals a right of access to official information in order to make public bodies more transparent and accountable. It is an important constitutional right, therefore engaging section 14(1) is a high hurdle.
35. However, the Commissioner recognises that dealing with unreasonable requests can strain resources; get in the way of delivering mainstream services or answering legitimate requests; and damage the reputation of the legislation itself.
36. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), the 'Dransfield' case⁴. Although the case was subsequently appealed, the UT's general guidance was supported, and established the Commissioner's approach to such cases.
37. The Dransfield case established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
38. The four broad themes considered by the UT in the Dransfield case were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
39. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

Complainant's position

⁴ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

40. The complainant's numerous comments and allegations ultimately all relate to the complainant's employment dispute with the Health Board.
41. During that dispute, claims made by the complainant have not been upheld.
42. The complainant is concerned that some relevant evidence may not have been considered; and seeks to challenge what was said during the dispute.
43. The complainant explained why they seek a copy of an 'external legal review'. They argued that there is a public interest in disclosure of the review as it was about clinical governance practices, and will reveal how concerns were handled. However the Commissioner's understanding is that a previous decision notice⁵ has already addressed this matter and, for example, found that the Health Board was entitled to withhold the requested information under section 42 of FOIA (the exemption for legal professional privilege).
44. On some requested details about a meeting, the complainant said that if they do not match what was claimed during their employment dispute it will be evidence of "misinformation".
45. Commenting on requested information about the escalation and use of complaints and allegations, the complainant has said "I have been denied verification of facts" and that they have been "victimised".
46. The Commissioner's understanding is that the complainant seeks to challenge the legitimacy of action that was taken by the Health Board.
47. The complainant said the requested information relates to "unsubstantiated claims or false allegations" revealed during their employment dispute, and "professional obligations have been breached".
48. The complainant listed some "public interest issues" which included "manipulation" of documents and making false claims to regulators.
49. The complainant said they want their concerns to be independently investigated, to ensure that in the NHS "we do not harm patient safety and suppress truth through information manipulations and false claims".

The Health Board's position

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025669/ic-200454-f0t4.pdf>

50. The Health Board explained that the correspondence of 28 and 31 March 2023 forms part of a series of requests from the complainant or their representative, and that since May 2021 it has received 19 requests.
51. It also said the majority of those requests have been large and complex, relate to the complainant's personal circumstances, and are repetitive or request similar information.
52. It also said it has already disclosed hundreds of emails to comply with the complainant's requests, and during the employment dispute.
53. Commenting on 'burden', the Health Board acknowledged that it is a large organisation and should be expected to be able to process information requests. However, it is concerned about the burden of the complainant's requests on clinical and other staff within scope of the requests (for example the burden of checking historic emails). It argued the requests are impacting the ability of staff to perform their functions.
54. Regarding motive, the Health Board noted the complainant's unsuccessful claims made during the course of the employment dispute.
55. It said the complainant has made a number of unsubstantiated claims about the Health Board, and related requests. It emphasised that "none of these allegations have been upheld, however requests continue to be submitted".
56. Addressing 'value or serious purpose', the Health Board said that the complainant's requests clearly relate to a personal matter, and that their purpose is private rather than public.
57. It argued that the complainant is exhibiting "unreasonable persistence" regarding matters that have already been scrutinised independently; trying to resurrect their case; and the continued submission of FOIA requests for the disclosure of information 'to the world' is inappropriate.
58. Commenting on the complainant's desire to obtain information to 'defend' themselves, the Health Board noted that any information that is relevant would be provided as part of the employment dispute process.
59. Finally, on 'harassment or distress', the Health Board said that continued requests are likely to impact the wellbeing of some staff members who have already been involved in the complainant's employment dispute.
60. The Health Board's judgement is that whilst staff commonly request information to support grievances, the complainant's "campaign" is causing an unjustified level of disruption to the services provided by the Health Board. It emphasised that the case has no public interest value,

and that by contrast patients would expect clinical staff and managers to be able to focus on their primary functions.

61. It also noted that it expects the complainant to continue submitting requests to the Health Board and to continue contesting any exemptions applied.

Commissioner's position

62. The Commissioner's guidance (cited at paragraph 33 above) explains that when assessing the value or serious purpose of a request, the issue is whether there is a public interest in disclosure. A requester's private interests in the information carry little weight unless they coincide with a wider public interest.
63. In this instance, the request correspondence relates to the complainant's private employment dispute with the Health Board.
64. The Commissioner considers that the public interest value in the requested information is limited to general considerations of transparency. The complainant has claimed some public interest issues (as noted at paragraph 48 above), but the Commissioner is not persuaded by those public interest issues, based on the information he has seen.
65. The complainant seeks to re-open matters that have already been investigated, for example during the employment dispute or the previous decision notice issued by Commissioner and cited at paragraph 43 above. This factor reduces the request's value or serious purpose.
66. Assessing burden, the Commissioner would emphasise the number, pattern and duration of the complainant's requests, over a period of two years.
67. He also acknowledges that the Health Board anticipates further requests from the complainant in future. His guidance recognises that where requests have been submitted over a long period, this may indicate that requests will continue to be made in the future; and it explains that public authorities may take into account the anticipated burden of future requests when assessing burden.
68. The motive for the request is the complainant's employment dispute with the Health Board. The complainant seeks disclosure 'to the world' under FOIA of the information they want; but FOIA may not be the most appropriate way to seek information for a private employment dispute.
69. The Commissioner recognises that a request or series of requests which make unsubstantiated allegations of wrongdoing can be vexatious; and

in this instance the Health Board has explained that none of the allegations that the complainant has made against the Health Board has been upheld.

70. Ultimately, the key question to consider is whether the value of the requested information **to the public** justifies the distress, disruption or irritation that would be incurred by complying with the request. In this instance the Commissioner considers that the factors in favour of applying section 14(1) outweigh the very limited value of the requested information to the public.
71. He therefore finds that the Health Board is entitled to apply section 14(1) of FOIA and refuse to comply with the request, as it is a vexatious request.

Right of appeal

72. 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

73. 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.
74. 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

Daniel Kennedy
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