

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2024

Public Authority: Mid and South Essex Integrated Care Board
Address: Phoenix Place
Christopher Martin Road
Basildon
SS14 3HG

Decision (including any steps ordered)

1. The complainant has requested information relating to Mid and South Essex Integrated Care Board (ICB's) processes surrounding Individual Funding Requests. The ICB refused the request as vexatious under section 14(1) FOIA.
2. The Commissioner's decision is that the request was vexatious and therefore the ICB was entitled to rely upon section 14(1) FOIA to refuse it. The Commissioner does not require any steps.

Request and response

3. On 7 February 2024 the complainant wrote to the Mid and South Essex Integrated Care Board (ICB) and requested information in the following terms:

"The body(s) used the all most impossible to achieve IFR as an illegal method to block choice in mental health from April 2014 to July 2023.

Impossible to achieve for example as only one patient in a population of +1 million got an IFR approved for Any health condition from July 2022 to July 2023.

Illegal as routine treatment does not require IFR as long as the service has a commissioning contract with Any NHS body.

And the body(s) have previously confirmed in FOI responses no/zero/none/0 patients ever got an IFR approved from April 2014 to the summer of 2022.

- 1, Who at the body(s) made the decision to use the illegal IFR from 2014 to July 2023?
- 2, Why did the body decide to drop its illegal IFR blocking method in July 2023?
- 3, Who told the body to stop using IFR was it NHS England?
- 4, So how many patients have been able to choose provider of mental health since July 2023 to present?"
4. The ICB responded on 1 March 2024 refusing the request under section 14(1) FOIA and stating it would not respond to any further FOIA requests on the topics of Patient Choice, Commissioned Mental Health services, IFRs or rTMS unless there was a clear purpose to the requests.
5. Following an internal review the ICB wrote to the complainant again on 27 March 2024 upholding its position.

Scope of the case

6. The complainant contacted the Commissioner on 27 March 2024 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to be to determine if the ICB has correctly relied on section 14 to refuse to respond to the request.

Reasons for decision

Section 14(1) – vexatious requests

8. 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.
9. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1) states, it is established that section 14(1) is designed to protect public authorities

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

10. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
11. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
12. 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), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield"). Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
13. Dransfield 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.
14. The four broad themes considered by the Upper Tribunal in Dransfield 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).

The ICB's view

15. The ICB explained that the complainant's issue with the ICB (and formerly the Clinical Commissioning Group (CCG)) came from the CCG wrongly directing the complainant to a process called Individual Funding Requests (IFRs) instead of advising them on how to enact patient choice. Since this time the ICB has acknowledged this and sought to assist the complainant however complaints and FOI request have continued.

16. The ICB has provided the Commissioner with a log of the complainant's correspondence with the ICB. The first of these logs dates from April 2020 to July 2023 and shows that 48 emails were received with FOIA requests, requests for internal review and follow-up correspondence. In the period from July 2023 to June 2024 the ICB states they have had 55 FOIA requests on the subject of Mental Health and Choice. The Commissioner has viewed a sample of these requests.
17. As well as the volume and frequency of correspondence and FOIA requests received the ICB is concerned by the nature of the communications and explained that contact comes via multiple channels and has the affect of harassing members of staff. The Chief Executive of the ICB has written to the complainant about the nature of communications, the harassment and the impact on the wellbeing of staff. The ICB has provided the Commissioner with other examples of communications and interventions directed to the complainant to attempt to reduce contact and ensure that where contact continues it is done so appropriately.
18. In addition to this the complainant has referred the ICB to the Parliamentary and Health Services Ombudsman (PHSO) on three occasions and the PHSO did not uphold any of these complaints.

The complainant's position

19. The complainant argues they have never requested answers to the questions asked in this request before but acknowledges they have some numbers for part (4) from a different data period.

The Commissioner's view

20. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
21. The Commissioner has considered both the complainant's position and the ICB's arguments and from the evidence, he is satisfied that the ICB was entitled to refuse the request under section 14(1).
22. The ICB has demonstrated that the complainant has made a substantial volume of requests on the subject of mental health services, patient choice and IFRs. There is overlap to some of these requests and it is clear that answering one request does not prevent further requests from being made. The Commissioner considers this does demonstrate a level of unreasonable persistence.

23. The fact that complaints have been escalated to the PHSO and dismissed and the requests and complaints continue suggests to the Commissioner that responding to continued requests will not provide an end point but will continue to result in more requests.
24. The correspondence from the ICB makes it clear that genuine attempts have been made to allow continued correspondence in a constructive, non-disruptive manner that does not result in staff feeling harassed or creating a disproportionate disruption to the ICB's normal course of business. However, despite these efforts correspondence and requests have continued in the same manner.
25. The complainant clearly considers their requests still have purpose or value. References to the illegal use of IFRs suggest they are looking to uncover and highlight wrongdoing and this seems to stem from the ICB's admittedly inappropriate referral of the complainant to the IFR process. However the Commissioner considers this occurred some time ago now and continued requests seem to be with the intent to continue complaints that have already been addressed and passed through all the relevant complaints procedures including with the PHSO.
26. The Commissioner acknowledges the complainant considers the requests have a serious purpose or value and they argue the request in this case is a 'new' request in that it is not asking for information that has been asked for before. The Commissioner considers the requests have a clear theme and pattern and whilst the request may be asking for 'new' information it is on a repeated theme. It's the Commissioner's view that the requests do not have any significant wider interest beyond the complainant's private interests.
27. The serious purpose or value to these requests has diminished over time as the ICB has addressed complaints and requests. The effect of these requests now on the ICB and its staff is now disproportionate to any purpose or value the requests may have to the complainant, let alone the wider public.
28. The Commissioner therefore considers that responding to further requests on this subject matter is not going to put an end to the issue, nor is there any compelling wider interest in the subject matter. It is clear the ICB has invested considerable time into responding to requests from the complainant but has now reached a point where it considers that responding to further requests would not be an appropriate use of its time and resources, would be a diversion from its core functions and activities and would impact on the well-being of staff.

29. For all of these reasons, the Commissioner concludes the ICB was correct in its application of section 14(1) FOIA to refuse to respond to the request.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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