

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2024

Public Authority: The Leeds Teaching Hospitals NHS Trust
Address: Trust Headquarters
St James University Hospital
Beckett Street
Leeds
LS9 7TF

Decision (including any steps ordered)

1. The complainant has requested information about a safeguarding referral. The Leeds Teaching Hospitals NHS Trust ('the Trust') relied on section 14(2) of FOIA (repeated requests) to refuse the request. The Trust later confirmed to the Commissioner that it was relying on section 14(1) (vexatious request) of FOIA to refuse the request.
2. The Commissioner's decision is that the Trust was entitled to rely on section 14(1) of FOIA to refuse the request. He also finds that the Trust breached section 17 of FOIA by failing to rely on the correct exemption when refusing the request.
3. The Commissioner does not require further steps.

Request and response

4. On 9 April 2024, the complainant wrote to the Trust and requested information in the following terms:

"Please advise as a foi request the month and year of the safeguarding referral made by the paediatric IBD team that you cited in a recent foi request to me, as per letter attached."

5. The Trust responded on 30 April 2024. It stated that it was relying on section 14(2) of FOIA to refuse the request, as it considered it had previously dealt with an identical or substantially similar request.
6. Following an internal review, the Trust wrote to the complainant on 21 May 2024. It maintained its reliance on section 14(2) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 9 June 2024 to complain about the way their request for information had been handled.
8. Upon receiving the Trust's submissions, the Commissioner noted that the arguments related section 14(1) rather than section 14(2). The Commissioner contacted the Trust to clarify whether it wished to rely on section 14(1) or section 14(2). The Trust confirmed that it wished to rely on section 14(1).
9. The Commissioner considers that the scope of his investigation is to determine whether the Trust was entitled to rely on section 14(1) of FOIA to refuse the request.

Reasons for decision

Section 14(1) – vexatious requests

10. 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.
11. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

13. However, the ICO 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.
14. 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")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
15. 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.
16. 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).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

"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).

The Trust's view

18. The Trust has explained that, for a number of years, the complainant has been focused on sourcing information about a referral made by the

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

Trust's Children's Safeguarding Team. It explained that the complainant has pursued several routes, and made a significant number of requests to try and obtain information on the matter, including subject access requests ('SAR') as well as FOI requests.

19. The Trust provided the Commissioner with copies of its responses to 12 FOI requests received from the complainant that predominantly concern staff safeguarding training compliance and safeguarding referrals.
20. The Trust explained that safeguarding concerns were raised in 2021, and since then the complainant has persistently submitted SARs, FOI requests and Patient Access and Liaison Service ('PALS') related correspondence to departments within the Trust. It explained that the complainant has used various email domains to try and gain the same information in multiple ways, over various years, to identify specific information in relation to individuals via its FOIA process.
21. The Trust considers that the complainant is attempting to gather information to identify and discredit individuals involved in the safeguarding referral process. The Trust added that the complainant has been known to covertly video and record a member of Trust staff during consultations without their knowledge.
22. The Trust stated that the complainant has made multiple referrals to the professional bodies of medical and nursing staff involved in the safeguarding referral. The Trust explained that its staff who have been subject to referrals to professional bodies were not found to have behaved unprofessionally, and all the allegations made by the complainant have been closed as unfounded, with no further action.
23. The Trust has explained that there has been significant impact on the individuals involved and dealing with the requests has caused anxiety, distress, and stress. It explained that a number of individuals involved have been unable to work with work-related stress, due to the ongoing case and the FOI requests still being received three years later.
24. It added that, because of the complainant's "unrelenting pursuance of this case" over the last three years, professionals have questioned their safeguarding confidence to protect other children in similar circumstances. It explained that its safeguarding supervision with the teams involved with the original safeguarding referral, repeatedly revisits this case for discussion, evidencing the trauma the complainant has caused to these professionals.
25. The Trust considers that the emotional energy staff use for every email and request received by the complainant, along with the cost to the Trust in man-hours, cannot be underestimated. It added that although,

for the most part, the complainant does not appear to have targeted individual staff members, the tone of the complainant's interactions with the Trust is frequently accusatory, to the extent of implying that the Trust is acting unlawfully.

The complainant's view

26. In correspondence with the Trust, the complainant stated

"I wholly refute that my request for the said information is "vexatious". My request is not intended to be annoying or disruptive but seeks natural justice and concerns from a patient safety perspective. I seek to determine if the paediatric IBD team were able to execute their duties to a reasonable standard of care [...]"

27. The complainant has explained that they have made a number of requests to the Trust to determine whether Trust staff were compliant with mandatory safeguarding training in 2021. The requests relate to a safeguarding referral and follow on actions carried out by the Trust.

The Commissioner's position

28. 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.

29. The Commissioner will first consider the burden of the request on the Trust. The request does not appear particularly burdensome in isolation, however, when considered in context of the complainant's other requests and their regular correspondence to the Trust over a number of years concerning the same matter, the cumulative burden can be seen.

30. The Commissioner notes the Trust's initial reliance on section 14(2) of FOIA stating that the requests were repeated requests. While the Commissioner does not consider the examples provided by the Trust to be identical requests, he does acknowledge that the requests are all on the same topic, and that they appear to try to obtain information for the same purpose.

31. When considering the value of the request and the motive of the complainant, the Commissioner acknowledges that the original reason for the complainant's requests to the Trust, and their ongoing persistence in continuing to make requests, has a serious purpose and motive. However, from the information provided, it appears to the Commissioner that the relationship between the complainant and the Trust has broken down to a point where the communication is no longer productive. The Trust feels that it has responded to the same requests a

number of times, and the complainant feels that the Trust is denying them the information despite asking for it repeatedly.

32. In this case, the complainant's concern focuses on whether the Trust is compliant in its mandatory staff training for safeguarding. However, this concern stems from the complainant's personal experience with the Trust, and appears to be an attempt to prove the Trust acted improperly. The Commissioner cannot comment on these matters, but from the information provided to him he finds that the Trust has attempted to provide responses to the complainant's previous requests, and has only recently referred to the requests as repeated or vexatious.
33. The Commissioner notes that the language used in the request itself is not abusive in nature.
34. In terms of distress caused to Trust staff, the Commissioner can understand that the volume, frequency and subject matter of the complainant's requests could be seen to cause distress to staff dealing with the requests under a range of access regimes. From the evidence provided, the Commissioner considers that the complainant is trying reopen matters that have been previously addressed and this is not an appropriate use of FOIA. The Commissioner notes that the complainant mentions that the matter has also been considered by the Local Government and Social Care Ombudsman.
35. Having considered the particular circumstances of this case, the Commissioner is satisfied that, although the complainant has a serious purpose and motive for making a number of requests to the Trust, their requests and correspondence with the Trust over time have become "vexatious by drift" and that they are now causing burden and distress to Trust staff. The Commissioner also notes that the complainant has pursued and exhausted alternative means of scrutiny, and he considers that this tips the scale in favour of section 14(1) being applied.
36. The Commissioner therefore finds that the Trust was entitled to rely on section 14(1) of FOIA to refuse the request because it was vexatious.

Procedural matters

37. The Trust originally relied on section 14(2) of FOIA to refuse the request but later confirmed to the Commissioner that it considered section 14(1) to apply instead. The Commissioner therefore finds that the Trust breached section 17 of FOIA by failing to rely on the correct exemption.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
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