

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2024

Public Authority: Lancashire and South Cumbria NHS
Foundation Trust

Address: Sceptre Point
Sceptre Way
Bamber Bridge
PR5 6AW

Decision (including any steps ordered)

1. The complainant has requested information about donations to charitable organisations and conflicts of interest. The above public authority ("the public authority") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and the public authority was not obliged to comply with it.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 21 May 2024, the complainant wrote to the public authority and made a request for information. The request made serious allegations against a named former governor. Given that the exact wording may potentially be defamatory and that it does not affect his analysis, the Commissioner will not reproduce the request in this notice.
5. The public authority responded on 18 June 2024. It refused the request as vexatious. It upheld this stance following an internal review.

Reasons for decision

6. Section 14(1) of FOIA allows a public authority to refuse a request that is vexatious. A vexatious request is one that would require a disproportionate effort to respond to, one without reasonable foundation or one which is an abuse of the process.

The complainant's position

7. The complainant explained that he had been elected as a governor of the public authority. In his role as a governor he had seen, what he considered to be, a mis-managed process to appoint a new chair of the governing council.
8. Due to his role in the process, the complainant stated that he was subsequently "arbitrarily" suspended by the outgoing chair and an investigation launched into his conduct.
9. Following the investigation report, the complainant was removed as a governor.
10. Since being removed the complainant says he discovered further "undisclosed conflicts of interest" relating to one particular governor's relationship with a charity that has received funds from the public authority.
11. The complainant argues that, had the investigation into his conduct been aware of this information, it would have been "fundamentally altered." He argues that this failure resulted in an "incomplete, untrue and misleading report...protecting [the Governor] and damaging me."
12. The complainant argued that:

"The apparent inadequacies of governance of NHS Foundation Trusts is a matter of significant public interest as illustrated by poor governance being a specific element in the 'Letby' (Thirlwall) Public Inquiry Terms of Reference, and new ministerial statements on the effectiveness of NHS management. This case is an example of how NHS Trusts have become 'a law unto themselves'.

"A proper disclosure of the information requested will illustrate either systemic deceit over a six year period, or systemic collusion and deceit in the same period, culminating in a 'confected', expensive investigation designed to remove a challenging, elected voice."
13. The complainant stated that he had reported the governor concerned to the Police.

The public authority's position

14. The public authority provided the Commissioner with a submission supported by a lengthy dossier of evidence.

15. Referring to its previous history with the complainant, the public authority noted that:

“[the complainant's] subsequent short tenure as Governor was characterised by his persistent and vigorous challenge of an ongoing Chair selection process by the Governors and inappropriate conduct and behaviour. This included making personal allegations against the Lead Governor overseeing the process...including of conflicts of interest, bias and even criminality.”

16. The public authority noted that it had completed two investigations into the recruitment process about which the complainant continues to raise concerns. These reviews have concluded that no major mistakes were made in that process (though better records could have been kept).

17. However, the latter report concluded that the complainant's behaviour in his role as a governor was so inappropriate as to require immediate action – which the public authority then took by removing him.

18. The public authority explained to the Commissioner that:

“[the complainant] was rightly and lawfully removed as a Governor, by a two-thirds majority of his fellow Governors, in view of his inappropriate behaviour, as confirmed by the independent external investigation.

“At no stage since has [the complainant] shown any true insight into, or acceptance of, this behaviour, or the validity of his removal as a Governor. [The complainant] has instead continued to perpetuate this inappropriate behaviour by embarking on a vexatious campaign of correspondence, information requests, allegations, complaints, litigation and harassment over several years.

“Underlying this campaign throughout is [the complainant]'s obvious and personal grudge against the Trust and a variety of individuals involved in the investigation of his behaviour, consequential removal, and dealing with him since. The list of individuals and organisations that [he] has criticised is long, including Executive and Non-executive Directors, staff, Governors, a range of professional advisors, and external organisations. However, he has made particularly sustained, vitriolic, and personal attacks against a smaller number of specific individuals. This includes [redacted], who is the primary focus of [the request]. It is no coincidence that [redacted] was the Lead Governor

who oversaw the Chair selection process and [the complainant]'s removal as Governor in 2022.

"Within that context and history, [the request] is a continuation of [the complainant]'s campaign against the Trust generally and [redacted] specifically. It represents [the complainant]'s latest attempt to challenge the validity of his removal of Governor, the integrity of those involved in that process...and of the wider governance arrangements and processes in place. These are all matters that [the complainant] has challenged previously and that have already been comprehensively investigated, responded to, and concluded.

"While we acknowledge that some of the specific allegations in [the request] are newly crafted by [the complainant], we do not consider that [he] can avoid his request from being regarded as vexatious simply by making new allegations, where the underlying motive and purpose of his request are the same, relate to the same underlying theme and grievances, and form part of his campaign."

The Commissioner's view

19. In the Commissioner's view, the request was vexatious.
20. In his reaching his decision, the Commissioner notes that the complainant has a genuine belief that the public authority is (or, at least, was) dysfunctional and that it is only through his own challenge that matters have, or would, improve. It is not the Commissioner's role to determine how well such a belief is grounded in fact.
21. The request, seen in isolation, has a serious purpose. It relates to alleged conflicts of interest and potentially a misuse of public funds. Albeit that it concerns the conduct of an individual that no longer has any role at the public authority.
22. However, the request should not be considered in isolation. It must be considered against the backdrop of the complainant's broader interaction with the public authority over several years.
23. The Commissioner agrees with the public authority that there is a clear link between the present request and the complainant's brief but eventful time as a governor.
24. The public authority provided the Commissioner with a copy of a report that had been carried out by an external organisation into its governance and the complainant's behaviour. The report found inappropriate conduct and behaviour on behalf of the complainant, specifically:

- Intimidatory or bullying behaviour
 - Disruptive and antagonistic approach to the public authority
 - Disrespectful and inappropriate challenge
 - Contemptuous and critical attitude towards colleagues
 - Failure to follow proper processes, protocols and instructions
25. The Commissioner notes that the complainant disputes those sections of the report which are critical of him and that he does not accept that the organisation which carried out the report was independent or rigorous in its approach. Curiously though, some of the correspondence the public authority has provided indicates that the complainant does appear to accept (and even endorse) those sections of the report which are critical of the public authority. This is particularly curious because the report is very clear that, where criticism was levelled at the public authority, it was mostly because the processes and people failed to deal with the inappropriate behaviour of the complainant – not because it was failing to deal with the issues the complainant was raising or was generally failing in its duties.
26. The public authority argues (and the Commissioner agrees) that this demonstrates a pattern of the complainant seeking to undermine or discredit those who call out his behaviour – as opposed to taking responsibility for that behaviour and considering the impact that it is having on those around him.
27. Indeed the Commissioner notes that, in his grounds of complaint, the complainant says that he has sought this particular information because:
- “Had this information been available during the investigation **it would have fundamentally altered the investigation** as it confirmed he was acting inappropriately and without the required level of independence in the chair selection process.” [emphasis added]
28. Having seen the full report, the Commissioner is deeply sceptical that, even if the complainant were correct about what the information he has requested would show (and the public authority has emphatically denied that he is correct on this point), it would have made any significant difference to the conclusions the report reached about the complainant’s behaviour. The report drew a careful distinction between the complainant’s right (and duty) to challenge the public authority and the manner in which those challenges were made.

29. Far from showing any genuine insight or remorse about his past behaviour, it is a consistent theme, from the correspondence that the Commissioner has seen, that what the complainant describes as his "increasingly challenging and direct communication style" was and is, justified, in the complainant's view.
30. It is clear to the Commissioner that the complainant's main motivation in making his request is the hope that he can use the information to excuse his past behaviour. The Commissioner also notes that the complainant may still be seeking re-instatement as a governor.
31. In terms of frequency, the Commissioner recognises that, averaged out across the time period, the complainant's correspondence is frequent (slightly higher than once every other week in 2023). There also tends to be periods of intense correspondence followed by a lull. For example he did not send a single email in June 2023, but sent five in just over a week the following month. That was followed by just five more emails between August and November, none at all through the early part of 2024, then four within a week in May – including the request that is the subject of this notice.
32. The Commissioner also notes that the correspondence is often lengthy and contains accusations of wrongdoing or personal attacks against the public authority's staff, or both.
33. The public authority has highlighted emails that reflected the complainant's style of correspondence. In one email, he wrote:

"What a corrupt little group you were part of. No wonder you didn't want transparency or integrity, let alone experience and ability, within your group.

"All murky water under the bridge you think? I can assure you it isn't.

"As the saying goes, you must struggle to lie in bed straight, the classic hypocrite, pretending one thing, desperate for approval, whilst being another. What else are you hiding?"
34. In another email, the complainant says:

"And your job was to hold them to account. Our leaders. What a joke you allowed your [Council of Governors] to become. You were the CoG they must have dreamt about. At least one of them referred to your CoG as 'useful idiots'!

Your unwillingness to accept you had got so much wrong as governors made you blind to the obvious and willing to tolerate bullying, deceit and ineptitude within the Board. Well done!

I laughed out loud when I read they are finally dropping Sefton as an irrelevance. As I said...18 months ago, why are you even there? Your feet too far 'under the table' you shouldn't even be sitting at, due to apathy, just doing damage."

35. Furthermore, the Commissioner considers it grotesque that the complainant has repeatedly compared his own situation to the scandals involving the Post Office and contaminated blood products, as well as to the Thirlwall Inquiry (looking into how Lucy Letby was able to murder babies at the Countess of Chester Hospital). No reasonable person could draw comparisons between the removal of a governor, for evidenced inappropriate behaviour and situations in which innocent people have been murdered, wrongfully imprisoned or infected with life-limiting viruses.
36. The Commissioner has considered whether the public authority answering this request is likely to bring matters to a close, or at least move them forward. In his view, that is very unlikely to happen. Indeed, if anything it is likely to make matters worse.
37. If the public authority were to disclose its records, the complainant is likely to either claim that they entirely justify his behaviour or, if he is unable to demonstrate that they show what he thinks they show, he will simply move on to another target in order to achieve the same goal. The public authority is entitled to draw a line in the sand and move on.
38. In the Commissioner's view whatever public value the request has is easily outweighed by the complainant's improper motivation in making it, his attempts to disrupt the work of the public authority and the general burden of work he has placed on the public authority over the last two and a half years.
39. The Commissioner therefore finds that the request is one that is both an abuse of the process, without reasonable foundation and which would require disproportionate effort. It is thus vexatious and consequently the public authority was entitled to rely on section 14(1) of FOIA to refuse it.

Right of appeal

40. 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

41. 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.
42. 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
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