

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2016

Public Authority: Humber NHS Foundation Trust
Address: Trust Headquarters Building
Beverley Road
Willerby
Hull
HU10 6ED

Decision (including any steps ordered)

1. The complainant made requests for information relating to the ownership of documents and their destruction. Humber NHS Foundation Trust (the Trust) answered the initial request but refused the later request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Trust has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 7 November 2015 the complainant made a request under the FOIA:
'In a previous reply the Trust stated that 'documents created by employees on behalf of the Trust in working hours are owned by the trust'. Whether the documents are in paper or electronic form who can authorize the documents destruction and in what circumstances.
3. The Trust responded on 17 November 2015:
'Document management within the Humber NHS Foundation Trust is described in the policy "Records Management and Information Lifecycle Policy"' (A copy of the policy was attached)
4. On 17 November 2015 the complainant asked:

'Could you confirm that an employee cannot make a unilateral decision to remove documents or records and destroy them without it being recorded.'

5. On 19 November 2015 the Trust issued a refusal notice stating that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 23 November 2015 to complain about the way his request for information had been handled.
7. The original request was made on the whatdotheyknow.com website with an abbreviated name. The complainant has confirmed that a full name and address was supplied to the Trust.
8. The Commissioner has examined the request and related correspondence from both the complainant and the Trust. The Commissioner has considered the scope of the case to be whether the Trust is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

Section 14 – Vexatious requests

9. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
10. The term “vexatious” is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

¹ GIA/3037/2011

11. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

12. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Background

14. The Trust has provided a background to this case.
15. The Trust provides information governance services to the neighbouring Hull and East Yorkshire Hospitals Trust (the Hull Trust), under the terms of a service level agreement.
16. In October 2013, the Hull Trust sought advice from the Trust on a subject access request from another person closely associated with the

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http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

complainant. After months of correspondence, there was a meeting in the home of this person in October 2014 and the complainant was present.

17. The Commissioner has seen evidence that there has been considerable FOIA and other correspondence from this person since January 2015 and that the subject matter is similar to the requests from the complainant. The Commissioner is not able to detail the subject matter as it relates to the personal information of this other person and will not be disclosed to the public here. However, the Commissioner is satisfied that the requests from the complainant and this other person originate from long-standing issues and are in collaboration.

Is the request obsessive?

18. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
19. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
20. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
21. In this case, the Trust has stated that this FOIA request from the complainant is similar to previous requests sent by the other person in February and March 2015 concerning the handwritten notes that were taken during the home meeting in October 2014.
22. The Trust explained to the other person that the handwritten notes had been destroyed once the person had agreed the content of the transcripts of the meeting. However, a further request was sent which was answered by the Trust in March 2015:
 - 1) *'When they were destroyed*
 - 2) *Who destroyed them*

3) *Who authorised the destruction of the notes*

4) *Why were they destroyed*

5) *Any correspondence to me information me of their destruction'*

23. The Trust explained to the other person on many occasions that the handwritten notes were disposed of after the transcript had been agreed by both parties. They *'did not need to seek authority to do this, neither is it described in any policy that someone would need to seek such authority'*.
24. The complainant's request in November 2015 repeats the subject of the other person's request: *'who can authorize the documents destruction and in what circumstances.'*
25. The Commissioner has taken into account the context and background to the request and considers that the attempt to reopen an issue which has already been comprehensively addressed by the Trust could reasonably be described as obsessive.

Is the request designed to cause disruption or annoyance?

26. The Trust believes that the request originated with the other person who is *'waging what amounts to a campaign against the Trust misusing his/her rights under FOIA. He/She has also made postings on the local press website...Any response which we offer merely prompts further emails. He/She has cost the Trust an incalculable amount of resources in staff's time and legal costs. We had no option but to treat further requests as vexatious.'*
27. The Trust stated that *'nothing which the Trust provides seems to satisfy the complainant and indeed generates further requests or opens other avenues...to pursue.'*
28. The Commissioner notes that in this case the complainant was provided with a copy of the policy "Records Management and Information Lifecycle Policy" in response to the request. However, on the same day, the complainant made another request on the same subject.
29. The Trust also provided information on the quantity of email from the other person and the complainant since January 2015. Eight requests involving 56 emails are listed with reference to another 80 emails.
30. The complainant has another case with the Commissioner which is the subject of decision notice FS50606658. In that case the subject of the request concerned the number of allegations relating to disability

discrimination and is similar to previous requests made by the other person.

31. The Commissioner notes the quantity and subject matter of the correspondence and finds that there is sufficient evidence to suggest that the request was vexatious in that it was in pursuit of a personal matter and is without merit or value to the public. It reflects the desire to keep the issue alive rather than to access recorded information and is designed to cause disruption and annoyance to the staff at the Trust.

Frequent or overlapping requests

32. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
33. The complainant and the other person have submitted frequent correspondence about the long-standing issues. In particular, this request about the destruction of documents repeats requests that were sent to the Trust earlier in 2015.
34. The Commissioner considers that the latest request is vexatious when viewed in context. It is a continuation of a pattern of behaviour and part of an attempt to keep an issue alive which has already been comprehensively addressed by the Trust. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing, likely to impose a significant burden, and obsessive.

The Commissioner's decision

35. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the Trust was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the Trust and is satisfied that the request is obsessive, had the effect of harassing the public authority and reflected the desire to keep the issue alive rather than to access recorded information. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

36. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

37. 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.
38. 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

Pamela Clements
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