

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2021

Public Authority: Oxford Health NHS Foundation Trust
Address: Littlemore Mental Health Centre
Sandford Road
Littlemore
Oxford
OX4 4XN

Decision (including any steps ordered)

1. The complainant has made a six part request for information to Oxford Health NHS Foundation Trust (the Trust). This request includes information relating to contracts, correspondence and monies paid by the Trust in relation to its clinical psychology doctorate.
2. The Trust refused to comply with the request under section 14(1) (vexatious requests) of the FOIA, as it considered the request to be vexatious.
3. The Commissioner's decision is that the Trust was entitled to rely upon section 14(1).
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 24 July 2020, the complainant wrote to the Trust and requested information in the following terms:

"(1) Full copy of the Trust contracts (2000-2020) authorising payment of money to the University of Oxford in respect of Trainee Clinical Psychologists employed by Oxford Heath NHS Foundation Trust; and full copy of the invoices for payment made by the Trust to the University of Oxford 2000-2020 (invoice per year).

(2) Full copy of the Trust contracts (2000-2020) authorising payment of money to Harris Manchester College in respect of Trainee Clinical

Psychologists employed by Oxford Heath NHS Foundation Trust; and full copy of the invoices for payment made by the Trust to Harris Manchester College 2000-2020 (invoice per year).

(3) Full copy of the correspondence (2000-2020) between Oxford Heath NHS Foundation Trust and Health Education England detailing the Trust's requests for authorisation to appoint the University of Oxford as a sub-processor of Personal Data (GDPR) of Trust employees: (i) Trainee Clinical Psychologists; and (ii) Qualified Psychologists; and (iii) other Trust employees. And full copy of the letter of authorisation issued by Health Education England to Oxford Heath NHS Foundation Trust.

(4) Full copy of the correspondence (2000-2020) between Oxford Heath NHS Foundation Trust and Health Education England detailing the Trust's requests for authorisation to appoint Harris Manchester College as a sub-processor of Personal Data (GDPR) of Trust employees: (i) Trainee Clinical Psychologists; and (ii) Qualified Psychologists; and (iii) other Trust employees. And full copy of the letter of authorisation issued by Health Education England to Oxford Heath NHS Foundation Trust.

(5) Full details of the money paid (2000-2020) by Oxford Heath NHS Foundation Trust to Harris Manchester College in respect of Harris Manchester College being a sub-processor of Data for the Data Controller (Oxford Heath NHS Foundation Trust) in respect of the contract between Oxford Heath NHS Foundation Trust and Health Education England pertaining to the Employment and Pre-Registration Training of Trainee Clinical Psychologists (NHS employees employed by Oxford Heath NHS Foundation Trust).

(6) Full details of the money paid (2000-2020) by Oxford Heath NHS Foundation Trust to the University of Oxford in respect of the University of Oxford being a sub-processor of Data for the Data Controller (Oxford Heath NHS Foundation Trust) in respect of the contract between Oxford Heath NHS Foundation Trust and Health Education England pertaining to the Employment and Pre-Registration Training of Trainee Clinical Psychologists (NHS employees employed by Oxford Heath NHS Foundation Trust)."

6. The Trust responded on 21 August 2020. It stated that the request was vexatious and therefore it was refusing to comply.
7. Following an internal review the Trust wrote to the complainant on 26 August 2020, upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 25 October 2020 to complain about the way their request for information had been handled. The complainant expressed concern that the Trust was concealing information iniquitously.
9. The Commissioner considers the scope of her investigation to be to determine whether the Trust was entitled to rely upon section 14(1) to refuse the request.

Reasons for decision

Vexatious requests

10. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

11. Section 14 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

12. The term 'vexatious' is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that 'vexatious' could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure'. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
13. The Dransfield case considered four broad issues: the burden imposed by the request (on the public authority and its staff), the motive of the requester, the value or serious purpose of the request and harassment or distress of and to staff. A public authority may take these factors into account when considering if a request is excessive.
14. The Dransfield definition confirms that it is important to consider proportionality and justification of any request before deciding it is vexatious.

15. The Commissioner has published guidance on the factors that may typify a vexatious request¹. However, it is important to note that even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious and the request must be considered alongside the value and purpose that the request may hold.
16. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: 'The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request.'
17. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: 'In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.'

The complainant's position

18. The Commissioner notes that it does not fall upon the complainant to explain why the request is not vexatious; rather the burden falls upon the Trust to explain why the request is vexatious. In line with her processes, the Commissioner wrote to the complainant setting out the scope of her investigation and invited the complainant to submit any further comments should they wish.
19. Upon return the complainant submitted a lengthy explanation as to why the clinical psychology doctorate which is the subject of this request is fraudulent and deceptive. Whilst the complainant did highlight that they believe disclosure is necessary to increase transparency around the spending of public funds, much of their submission was spent making allegations against the Trust and other public authorities involved in the clinical psychology doctorate.

The Trust's position

20. To reiterate, the subject of this notice is the complainant's request dated 24 July 2020. However, in considering whether the Trust was entitled to rely upon section 14(1) in relation to this request, the Commissioner has considered the context and history of the relationship between the two parties.

¹ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/dealing-with-vexatious-requests.pdf)

21. The Trust has provided the Commissioner with an overview of the complainant's interactions thus far with the Trust. Since May 2012 the complainant has submitted 29 separate requests for information, the majority of which relate to the clinical psychology doctorate that is the subject of the request in question. The Trust has also drawn the Commissioner's attention to the fact that, of these 29 requests, many contained sub-requests.
22. The Trust further explained that its interactions with the complainant are not limited to requests for information. Over the past eight years the complainant has sought to engage the Trust's HR team, the Chief Executive's Office, the Health Records Team and the team responsible for the clinical psychology doctorate. The issues raised include recruitment practices, disability discrimination and equality issues and made repeated accusations of victimisation and discrimination.
23. The complainant has also sought to engage the Trust in employment litigation. This litigation was ongoing at the time that the request was received. The Trust notes that it has never employed the complainant.
24. All of the complainant's contact with the Trust revolves around the employment and professional development in the Trust's psychology department, specifically within the clinical psychology doctorate course.
25. The complainant's concern appears to stem from a dispute regarding their relationship with the Trust. The complainant is concerned that they should have been offered a place on the aforementioned course, whilst the Trust has informed the Commissioner that the complainant is not currently and has never been an employee of the Trust, patient or carer within the Trust and has never been an applicant for the course in question.
26. One of the factors referred to within paragraph 15 is that of unreasonable persistence. The Trust has explained that it considers the complainant's requests represent an acutely focussed and persistent approach to a narrow set of issues which represent an unresolvable dispute.
27. Another factor is frequent or overlapping requests where a complainant may submit frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
28. The Trust has also brought it to the Commissioner's attention that, whilst it was considering the request, the complainant submitted a further two requests for information and two requests for internal

reviews. All of the aforementioned correspondence relates to the Trust's clinical psychology doctorate course.

29. The Trust notes that it has provided substantive responses to many of the complainant's 29 requests. However, the complainant's requests have become increasingly complex and wider in scope over the years. Vexatiousness by drift is where a request may begin as meaningful but over time loses its proportionality and becomes vexatious.
30. Another factor referred to within paragraph 15 is the burden that would be placed on a public authority, and its staff, should it comply with the request. The Commissioner's guidance states that a request may be vexatious if 'The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.'
31. The Trust has explained why it believes the detrimental impact of complying with the request would be so great. The request itself is made up of six sub-requests which span a period of 20 years. Furthermore the scope of the request is considerably wide, the complainant has requested contracts and invoices relating to the clinical psychology doctorate course but also other Trust frameworks, correspondence between the Trust and its academic partners and stakeholders and financial information.
32. The Trust has explained that this information, if it is held, would not be organised in a single system, either electronic or physical. It is likely that it would be held in a mix of both hard-copy and electronic folders, across potentially multiple departments, teams and locations. With this in mind, the Trust does not believe that the information could be located quickly and, once located, there would be substantial exempt information to consider, such as personal information, which would not easily be isolated because it is scattered through the requested material.
33. Though the Trust recognises that it is the request itself and not the requestor that is vexatious, it considers that the cumulative effect of compliance with the complainant's requests referred to within paragraph 28 would be substantial.
34. The Trust considers that, not only would compliance with the request have a significant and detrimental effect on employee time and the operation of the Trust's services, it is likely to cause irritation and distress to the staff tasked with fulfilling the request. The Trust maintains that the request has been submitted in the complainant's belief that it will expose evidence of impropriety of staff and the allegations made, and further the complainant's ongoing litigation against the Trust.

35. The Trust has also explained to the Commissioner that it considers the complainant's request and much of their correspondence contain unfounded and unsubstantiated allegations against the Trust and its employees which the Trust denies.
36. The Trust considers that the wording of the complainant's request, specifically the repeated requests for "*full copies*" and "*full details*", lends itself to the complainant's allegations that the Trust has deliberately supplied partial information in response to other requests.
37. The complainant submitted to the Commissioner that the Trust was deliberately blocking information from disclosure, an offence under section 77 (offence of altering etc. records with intent to prevent disclosure) under the FOIA. The Commissioner notes there is insufficient evidence to substantiate this claim.
38. The Trust has also drawn the Commissioner's attention to the language the complainant used in their internal review request. The complainant appears to question the professionalism, conduct and honesty of a member of the Trust's Information Governance Team; '*[Name redacted]'s refusal to disclose the information requested is wholly untenable and not in the Public Interest. The Public Interest overrides any personal desire of [Name redacted] or the Trust to conceal information.*'

The Commissioner's view

39. As discussed in paragraph 14, it is important to consider proportionality and justification of any request before deciding it is vexatious. If a request contains one or more of the indicators referred to within the Commissioner's guidance but its value and purpose represent an issue of real public interest, it may not necessarily be vexatious.
40. The Trust has explained that, since the complainant made their first request for information in 2012, they are the only individual to have requested information relating to the clinical psychology doctorate.
41. Whilst there is a general public interest in transparency and accountability surrounding public authorities, the Commissioner concurs with the Trust's assertion that there is no wider public interest, value or purpose contained within the complainant's request for information.
42. The Commissioner believes that the request is indicative of the complainant's personal campaign which appears to have derived from circumstances, or concerns, that are very specific to the complainant. The Commissioner and the Trust are in agreement that the requested information is so specific that disclosure would not promote, or prompt, any worthwhile public understanding or debate.

43. The Trust is concerned that disclosure would only serve to further the complainant's unsubstantiated campaign against the Trust and its clinical psychology doctorate. The Trust now considers this campaign to represent a vendetta.
44. The Trust has further elaborated that it considers the complainant's entrenched position is evidenced in the persistence of their requests. The Trust has provided the Commissioner with an appendix of all of the complainant's 29 requests and the Commissioner is satisfied that this request which is the subject of this notice is representative of the complainant's intransigence.
45. Ultimately, the Commission agrees with the Trust's assertion that the complainant is unlikely to be satisfied by any response, or that the supply of any further information would provide any realistic prospect of resolving the complainant's long-standing concerns and deep-rooted belief that the Trust has behaved inappropriately towards them.
46. The Commissioner notes that the matters with which the complainant is concerned are of immense importance to them. However, she considers the ongoing dispute between the complainant and the Trust serves no wider public interest. She deems this persistent use of the FOIA to pursue such a grievance has reached the point where it now constitutes an abuse of the process whereby the complainant is using requests made under the FOIA as a means to continuously revisit personal arguments with the Trust.
47. Revisiting the themes of vexatiousness within the Dransfield case, the Commissioner is satisfied that the complainant's motives behind this request are to further their personal, long-standing campaign against the Trust. The Commissioner is also satisfied that any member of staff tasked with corresponding with the complainant regarding the request may potentially feel harassed in doing so and, coupled with the burden compliance with the request would impose on the Trust and balancing these factors against the little value and purpose that the request appears to represent, the Commissioner deems the request vexatious. The Commissioner considers that the Trust was entitled to rely on section 14(1) of the FOIA to refuse the request.

Right of appeal

48. 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

49. 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.
50. 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

Alice Gradwell
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