

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 9 August 2007

Public Authority: Dr Tessa Buckman
Address: Torrington Group Medical Practice
16 Torrington Park
North Finchley
London
N12 9SS

Summary

The complainant submitted a request to a GP (who, for the purposes of the Act is considered to be a public authority in her own right). The GP refused to answer this request on the basis that it was vexatious. Having considered the evidence in this case, the Commissioner is satisfied that the request was vexatious because, when taken in the context of the complainant's previous correspondence and other actions, this request imposed a significant burden on the GP and also had the effect of harassing her.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

2. The complainant wrote to the Torrington Park Group Practice (the Practice) on 18 September 2006. This four page letter contained a number of questions and cited both the Act and the Data Protection Act 1998 (DPA) as legislation under which the complainant wanted a response to his questions. The focus of these questions were issues surrounding the Practice's decision to remove the complainant from its patient list.
3. The only question that constituted a request under the Act, rather than under the DPA, was:

'Dr X letter' of 22 Aug 2006: Where did Dr Buckman & [name redacted] receive their top-up training from, date of top-up training & nature of their top-training: I hope that this training was ex-practice, included on this training was face cancer recognition!'

4. On the 15 November 2006 the Practice informed the complainant that it considered his freedom of information request vexatious and therefore on the basis of section 14 of the Act refused to answer it. The Practice also informed the complainant that it did not consider it necessary or pertinent to review this decision internally.

The Investigation

Scope of the case

5. On 23 November 2006 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant argued that the Practice were incorrect to refuse to answer his freedom of information request on the basis that it was vexatious.
6. The complainant also raised other issues that are not addressed in this notice because they are not requirements of Part 1 of the Act. As noted above, the complainant's letter of 18 September 2006 included a number of subject access requests and the complainant raised a number of concerns regarding the Practice's handling of these requests. The Commissioner has conducted a separate investigation in relation to the Practice's compliance with the DPA in handling these requests. However, the details of that investigation are not discussed in this decision notice.

Chronology

7. The Commissioner contacted the Practice by letter on 19 February 2007 and by telephone on 22 February 2007 in order to discuss the Practice's decision to refuse to answer the complainant's request on the basis of section 14 of the Act.
8. The Practice provided the Commissioner with a response to his enquires on 8 March 2007. The Practice explained to the Commissioner that 'this complaint has been on-going since December 2004 and during this time we have endeavoured to send [the complainant] copies of everything he has requested'. The Practice provided the Commissioner with a breakdown of the information previously provided to the complainant since December 2004. The Practice noted that on some occasions it had responded to repeated requests by the complainant by providing him with duplicate copies of information.
9. The Practice said it believed that it was appropriate to refuse to answer the request on the basis of section 14 because: 'There is clearly no purpose or value in requesting this information again and we believe that any such request is designed to cause disruption and annoyance. This continuing harassment has

been quite disruptive to practice administration and it does appear to us to be manifestly unreasonable'.

10. During these initial discussions with the Practice the Commissioner established that the Practice's position was that it did not in fact hold details of the training opportunities undertaken by the two GPs in question. This is because they were not employees of the Practice, rather they were self employed and were paid directly by the PCT and therefore the Practice had no need to keep a record of the individual GP's training. However, the Practice explained that to practice as GPs both doctors had to be included on the PCT Medical Performers List. To be included on this list the doctors would have provided the PCT with sight of their certificate of vocational training, GMC registration certificate, CRB disclosure certificate, professional indemnity insurance certificate and their hepatitis B status.
11. The Commissioner considered the explanation provided by the Practice as to why it did not hold any details of the two doctors' training record to be reasonable and sound.
12. In line with his policy, the Commissioner, where appropriate, attempts to resolve complaints informally without the serving of a decision notice. Although the Commissioner acknowledged that the Practice had refused to answer this request on the basis that it was vexatious, the Commissioner asked the Practice whether, without prejudice to its application of section 14, it would be prepared to respond to the complainant's request rather than to continue to rely on section 14. Whilst the Commissioner would not consider this course of action appropriate in every case, in this instance as the answer to the complainant's request was basically a denial that the Practice held the information, he considered it judicious to attempt to have the complainant provided with this response.
13. On 22 March 2007 the Practice confirmed to the Commissioner that it was happy for him to inform the complainant that it did not hold information about the top-up training the doctors had undertaken. The Commissioner communicated this information to the complainant on 29 March 2007.
14. The complainant subsequently contacted the Commissioner on 16 April 2007 and explained that he was dissatisfied with the suggestion that the Practice did not hold details of the training the doctors had undertaken.
15. At this point in the investigation the case officer responsible for this case established that medical practices are not, for the purposes of the Act, public authorities. Rather, each GP is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect that for convenience the practice will act as the single point of contact. However, ultimately, each GP in the practice is a public authority in their own right and the duty under section 1 of the Act to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions, is placed on each GP and not on any medical practice or partnership of doctors of which they may form a part.

(Please see the legal annex at the end of this notice for a more detailed explanation of how GPs are covered by the Act).

16. In light of this position, the Commissioner considered it correct to discuss this complaint directly with the two GPs in question rather than discuss the complaint any further with the Practice itself. Consequently, the Commissioner wrote to Dr Buckman on 8 May 2007. In this letter the Commissioner outlined his position with regard to the fact that GPs are public authorities under the Act and that the Practice itself was not considered to be a public authority. The Commissioner asked Dr Buckman to clarify her position with regard to this request. The Commissioner explained to Dr Buckman that she was under a duty to confirm whether she (rather than the Practice) held the information of the nature requested by the complainant, and if so, whether she was prepared to disclose this information to him under the Act.
17. The Commissioner received a response from Dr Buckman on 22 June 2007. She confirmed that she considered the complainant's request vexatious. In explaining how she had reached this conclusion she explained that she had considered the Commissioner's awareness guidance on section 14 and also noted that the Practice had previously provided reasons as to why it believed the request was vexatious (see paragraph 9). *[Remainder of paragraph redacted]*

Analysis

Section 14

18. Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
19. The Commissioner has produced awareness guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious, the request must impose a significant burden on the public authority and:
 - Clearly does not have any serious purpose or value;
 - Is designed to cause disruption or annoyance;
 - Has the effect of harassing the public authority; or
 - Can otherwise fairly be characterised as obsessive or manifestly unreasonable.

Significant burden

20. In her representations to the Commissioner Dr Buckman explained that the complainant's freedom of information request was only a small part of his contact with her. *[Remainder of paragraph redacted]*.

21. Following his removal from the patient list the complainant submitted a number of subject access requests to the Practice. In some instances these requests asked for information that had in fact already been provided to the complainant, but the Practice and Dr Buckman ensured that the complainant was provided with duplicate copies of the information. Dr Buckman has suggested that the time, effort and resources needed to manage the correspondence that was being received by the complainant, and resolving the issues raised by the complainant in this correspondence, placed a significant burden on her time. However, Dr Buckman did not provide the Commissioner with any breakdown of the time and cost Implications of responding to the either the complainant's previous request or this request.
22. Nevertheless, the Commissioner has reviewed a selection of the correspondence sent by the complainant and acknowledges that responding to this past correspondence, along the this request, would have imposed a significant burden on Dr Buckman. The approach of taking into account a complainant's dealings with a public authority outside of, and previous to, the Act in order to demonstrate a significant burden is consistent with the Commissioner's previous decision notices on section 14. In decision notice FS50130467 the Commissioner accepted that previous non-FOI correspondence was correctly used by a public authority to demonstrate that a significant burden would be placed on the public authority and thus the latest FOI request was vexatious.
23. In reaching this conclusion the Commissioner has placed particular weight on the relatively small resource GPs have to deal with freedom of requests, particularly requests which relate to matters which have previously been rehearsed in other contexts. The resource available to GPs to deal with such requests clearly differs from the resource available to other public authorities, such as central government departments. Simply put, whilst the Commissioner accepts that this request, when taken with the complainant's previous correspondence and engagement with Dr Buckman, placed a significant burden on her, he is not necessary suggesting that such a request would place a significant burden on a much larger and better resourced public authority.

Serious purpose or value

24. The Commissioner notes that Dr Buckman suggested that there was clearly no serious purpose or value in the complainant requesting this information again. The Commissioner believes that the clear implication of this statement is that the complainant had already been provided with information relating to the training records of Dr Buckman. The Commissioner is satisfied that this not the case; although as noted above the complainant was provided with duplicate copies of his own personal data held by the Practice. Therefore, the Commissioner rejects the suggestion that this request has no serious purpose or value because it was essentially repeated.
25. Furthermore, the Commissioner recognises that it could be argued that there is no serious purpose or value in a member of the public requesting information relating to the ability of a GP to practice because there are a number of independent bodies which regulate the delivery of healthcare services in the UK.

For example, the GMC protects and maintains the health and safety of the public by ensuring proper standards in practice of medicine. The Healthcare Commission assess the management, provision and quality of NHS healthcare and investigates complaints that have not been resolved at a local level.

26. However, the Commissioner believes that to label a request as having no serious purpose or value is tantamount to suggesting that the requestor is being frivolous by simply asking for the information in question. The Commissioner is sympathetic to the sensitive issues surrounding this case, namely the patient's direct and obvious interest in the quality of healthcare provided to both him and his family. Therefore, the Commissioner accepts it is reasonable to conclude that the request did, from the point of view of the complainant, have a serious purpose.

Designed to cause disruption or annoyance

27. Equally, the Commissioner does not accept that the complainant deliberately submitted the request simply to cause disruption or annoyance to Dr Buckman. As has been suggested above, the Commissioner accepts that it is reasonable to conclude that the complainant had a genuine purpose in submitting the request.
28. However, the Commissioner's guidance on section 14 notes that a distinction can be drawn between the purpose of a request and the effect of a request:

'Effect will need to be considered as well as intention. Even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, then it will be appropriate to treat the request as vexatious'

29. The Commissioner accepts that this request, when taken with the complainant's previous contact with the Practice and Dr Buckman, could have the effect of disrupting or frustrating the administration of the practice and the ability of the individual doctors to practise.

Effect of harassing public authority

30. The Commissioner acknowledges that the complainant clearly remains dissatisfied with the treatment he was given by Dr Buckman and the way in which the Practice conducted the conciliation process which resulted in the complainant and his family being removed from the patient list at the Practice. As noted above, the Commissioner is sympathetic to the very personal and serious nature of these issues surrounding this case and accepts that in cases such as these the complainant is likely to engage in frequent contact with a public authority.
31. *[Paragraph redacted].*
32. On the basis of the above, the Commissioner is satisfied that by submitting the request of the 18 September 2006 the complainant's behaviour had the effect of harassing Dr Buckman *[remainder of paragraph redacted].*

33. Moreover, the Commissioner has noted the language and tone of the complainant's letter of 18 September 2006 and other correspondence with the Practice. As the Commissioner's guidance on section 14 suggests although a request which contains abusive language or is written in a threatening tone will not necessarily be vexatious, the use of such language or tone may be strongly indicative of a vexatious request. The complainant's request of 18 September suggested that the practice manager was 'vindictive' and that her approach to his complaint had led to a 'conspicuous unfairness & abuse of power'. Additionally, the complainant explained to the Commissioner that he had 'promised the Practice publicity with my case. I have now a website constructed against the Practice, Barnet NHS PCT & UK Government naming names. I will go on line with my website when UK domestic & Strasbourg leads & judgements are exhausted'. The Commissioner believes that is reasonable to conclude that Dr Buckman would have felt harassed, if not threatened by the tone of this request and the implications of what the complainant would do with any further information that was provided to him.

Conclusion

34. In conclusion the Commissioner is satisfied that answering this request, when taken in the context of the complainant's previous correspondence and other actions, placed a significant burden on Dr Buckman and had the effect of harassing her. Therefore, the Commissioner is satisfied that the request can correctly be deemed as vexatious.

The Decision

35. The Commissioner's decision is that Dr Buckman dealt with the request for information in accordance with the Act.

Steps Required

36. In light of the above, the Commissioner does not require the public authority to under take any steps in order to ensure compliance with the Act.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 9th day of August 2007

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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.'

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

'Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between'

Status of GPs under the Act

Schedule 1 of the Act outlines which bodies are covered by the Act. Part III of Schedule 1 relates to organisations and individuals in the National Health Service. Paragraphs 44 and 45 of Part III deal with the coverage of GPs:

'44. Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service Act 1977, in respect of information relating to the provision of those services

45. Any person providing personal medical services or personal dental services under arrangements made under section 28C of the National Health Service Act 1977, in respect of information relating to the provision of those services'.

The Commissioner is satisfied that a GP is a separate legal person who falls within either or both of the classes above. Therefore each GP is a separate public authority for the purposes of the Act whether they operate in a medical practice with other GPs or not.

However, the Commissioner recognises that information held by GPs will only be covered to the extent where that information relates to the 'provision' of general or personal medical services. Therefore, some information held by GPs will not fall within this condition.