

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2012

Public Authority: Great Yarmouth and Waveney Primary Care Trust (the 'Trust')

Address: 1 Common Lane North
Beccles
Suffolk
NR34 9BN

Decision (including any steps ordered)

1. The complainant made three requests to the Trust. He asked for information including some practice's policies on prescribing generic drugs, the incentives around them and other connected staffing details.
2. The Trust answered two of the requests and applied section 14(2) [repeated request] to the third request. It also explained that it would not answer any other questions of this nature in future. The complainant was not happy with either the answers that he received, or the application of section 14(2) and referred his complaint to the Information Commissioner ('the Commissioner').
3. During the investigation, the Trust applied section 14(1) [vexatious requests] to the three requests in question. Having considered both sides' arguments, the Commissioner considers that the Trust was entitled to apply section 14(1) in this case as the requests were vexatious.
4. However, he did find a procedural breach of section 17(5) because the Trust never issued a refusal notice to the complainant informing him it was relying on this exemption. He also finds that the refusal notice it did issue was not specific enough to comply with section 17(6) and stop it needing to issue a response in the future. He requires no remedial steps to be taken in this case because this notice explains why the requests could be objectively seen as being vexatious.

Request and response

5. Between 24 August 2011 and 9 September 2011, the complainant submitted three different requests to the Trust, containing sixteen different questions. A copy of those questions is located in Appendix A of this decision notice.
6. The Trust attempted to answer the requests dated 24 August 2011 and 9 September 2011. On 20 September 2011, it issued a refusal notice for the request dated 8 September 2011 explaining that it considered it was a repeated request and that it did not need to answer it by virtue of section 14(2) [repeated requests]. It also explained that it would not enter into further correspondence about related matters considering the time it had spent addressing previous requests. It has told the Commissioner that this response was targeted at both the complainant and an organisation with which he is associated.
7. The complainant was dissatisfied with both the answers he had received and the application of the exemption and complained to the Commissioner.
8. During the course of his investigation, the Trust explained to the Commissioner that it also considered that the three requests were vexatious and was therefore applying section 14(1) [vexatious requests].

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. After further correspondence to obtain the relevant documents (from both the complainant and the public authority), the Commissioner has explained to both parties that the matters he will consider are:
 1. Whether the Trust has complied with the obligations imposed on it by FOIA in relation to the three requests dated 24 August 2011, 8 September 2011 and 9 September 2011;
 2. If not, whether there is further relevant recorded information which needs to be provided to the public; and
 3. Whether the scope of the refusal notice dated 20 September 2011 is in accordance with the law.

11. It should be noted that the Commissioner does not have the power to consider any other matters besides information access matters. In particular he cannot consider whether generic drugs are safe, whether incentives to use generic drugs amount to bribes or when it is appropriate for Practices to refuse to treat patients.
12. It is also useful to explain what a 'generic drug' is. A pharmaceutical company can develop a drug and the reward for its innovation is a patent that allows (in exchange for it publishing the formula to the world) that it can develop the drug exclusively (either itself or by licensing it to others) for 30 years.
13. After that 30 years passes, the drug can be made by anyone to the same specification. The drugs that are not made by the original company but have the same specification are called 'generic drugs'. The Medicines and Healthcare Regulation Authority [MHRA] is the UK regulator that ensures that pharmaceutical products are safe. It allows abridged applications where the active products of drugs are already known to be 'safe'. It can then ask for additional information providing proof of the safety and/or efficacy of the various salts, esters, or derivatives of an authorised active substance. The MHRA explains that the data requirements and its assessment process are designed to aim to ensure that patients can switch between the brand leader product and a generic version without causing any therapeutic problems¹.
14. Finally, the Commissioner has considered whether the requests were asking for the complainant's own personal data and whether they needed to be considered under section 7 of the Data Protection Act 1998 ('the DPA'). He considers that the information does not constitute the complainant's own personal data, because his personal circumstances simply added context to what was requested, but did not relate to or identify the complainant himself. He has not therefore considered the request as a subject access request under the DPA.

¹ More detail about this process is found at the following link (correct as of 17/02/2012): <http://www.mhra.gov.uk/Howweregulate/Medicines/Licensingofmedicines/Marketingauthorisations/Abridgedproducts/index.htm>

Reasons for decision

15. Section 14 of FOIA states that:

***14(1)** Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious;*

***(2)** 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 compliance with the previous request and the making of the current request.'*

16. As noted above, the Trust originally applied section 14(2) to one of the three requests for information. During the course of the investigation, it informed the Commissioner that it considered that all three requests could be correctly characterised as vexatious.

17. As section 14(1) has been applied to the whole request, the Commissioner will consider it first. He has therefore considered whether the requests were vexatious. This section acts as an exclusion to the obligation to confirm whether information is held to the public. If it applies, then the Trust need not do anything further with those requests.

18. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards.

19. The Commissioner also endorses paragraph 21 of the Information Tribunal's decision *Mr J Welsh v the Information Commissioner* (EA/2007/0088) ('Welsh') (paragraph 21) where it stated:

'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but

vexatious if made by another; valid if made to one person, vexatious if made to another.'

20. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
- whether compliance would create a significant burden in terms of expense **and** distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - whether the request has any serious purpose or value.
21. It is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention. He generally considers that where two or more factors are satisfied in his guidance that this provides a good guide when a request is vexatious.
22. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to paragraph 26 of *Welsh*. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high. The Commissioner also notes that it is the request, not the requester, which can be refused as vexatious.
23. The Commissioner will consider each of the factors in his guidance in turn. However, he has kept in mind the Information Tribunal's view that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach. He has therefore considered these tests 'in the round'.

Whether compliance would create a significant burden in terms of expense and distraction

24. When considering this factor the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

25. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.

26. The Tribunal in *Gowers* emphasised that previous requests received may be a relevant factor (at paragraph 70):

'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'

27. The Trust has confirmed that considering the request isolated from its context would not cause a significant burden in terms of expense or distraction. It explained that it had already clarified to the complainant it had and did not have recorded information for the majority of the requests previously.

28. However, the Trust believes that the context and history of the requests are crucial to consider in this case. It explained the burden in terms of expense and distraction in relation to its previous interaction with the complainant and a group associated with him about the same issues. This burden was so great that it was reasonable to say that the requests caused a significant burden within their context.

29. The Trust asked the Commissioner to take into account the following arguments about the request's context, which the Commissioner considers to be relevant to the burden of this request:

- The request is part of the complainant's interaction that relates to its policy to prescribe generic drugs when it considers it to be appropriate and how it enforces that policy;
- The complainant contends that this policy is unlawful because either the generic drugs are more dangerous than the branded equivalents or that the incentives the Trust offers to Practices to save money by using generic drugs amount to illegal bribes;

- The complainant is upset that the Practice he attended would not provide him with the branded equivalents that he wanted. Consequently, the Practice's relationship with the patient broke down and he was moved to somewhere less local to him. The complainant continues to contend that the Practice's policy not to prescribe the branded drugs was unlawful/illegal;
- The complainant was part of a group who have also made a number of requests about similar issues using very similar wording;
- The Trust has received 9 original requests (each containing a number of questions) and 20 supplementary requests about its answers between 4 November 2010 and 9 September 2011. It provided the Commissioner with copies of this interaction;
- The requests are sometimes framed as rhetorical questions and mostly feature forceful expressions of his discontent;
- The supplementary requests are often either repeats or subtly reworded existing requests and require the work that is done to answer them to be done again and again;
- The Trust has also received considerable correspondence from the complainant between 2004 and the present day. A lot of this correspondence is intemperate and contains serious allegations. The Trust provided the Commissioner with a copy of it;
- Judicial review proceedings were also embarked upon by the complainant. The complainant was originally refused permission for judicial review, but he successfully appealed this. He was then refused permission again on 25 August 2011. The Trust has had to cope with correspondence and distress of this action alongside the requests;
- It has also received 4 subsequent communications about similar issues that it has not answered;
- The overall effect of the requests within their context of the previous communications have caused the Trust significant distraction from its function of facilitating the provision of primary care to its patients;
- It considers the request is part of the pressure applied by the complainant which appears to aim to make the Trust concede that its treatment of him wasn't appropriate; and
- The pressure of the request was enhanced by the complainant copying his requests to a very large number of other bodies. The Trust would then receive correspondence from other bodies that it

would have to consider and this would add further weight to the burden it experienced from the requests.

30. The Trust acknowledged that dealing with complaints is one of its core functions. However, it explained that it should be entitled to deal with complaints in a manner that is fair and efficient. There is a disagreement at the heart of this case that can only be resolved if it backs down to the complainant about the substantive issue. It argued that it cannot be a correct use of FOIA to enable the complainant to place unmitigated and unacceptable pressure on the Trust itself and individuals who work for it.
31. The complainant himself has noted that the Trust in not accepting his position has had to spend a great deal of resources defending his challenges. Indeed he stated on 21 January 2011 that *'I am advised that the long saga over a pill originally 7.5 p costing the NHS has now escalated to a figure that might exceed £1 million could be a misappropriation of public funds by yourself and others.'*
32. The Commissioner agrees with the Trust that the complainant's interaction about this matter is completely disproportionate and the requests amount to part of the unacceptable pressure for the Trust to concede ground to him.
33. The Commissioner acknowledges that the complainant considers he requires what he has requested to pursue his complaints. However, the Trust has provided him with what he has requested in some cases and provided good reason why it does not hold information in other cases. In essence, the requests evidence an approach that shows that the complainant will continuously and vigorously challenge the Trust whenever he doesn't receive exactly what he expects to receive. Indeed the request dated 8 August 2011 acknowledged that the Trust had said that it didn't hold information for 2004 and the complainant asked the court to consider if it was 'a lie'.
34. The Commissioner has also considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] (*'Coggins'*) about what constitutes *'a significant administrative burden'* and is satisfied that dealing with the three requests (alongside all the connected correspondence) would have contributed to a *'significant distraction from its core functions'* (paragraph 27).
35. The Commissioner has also considered the approach in *Betts v The Information Commissioner* [EA/2007/0109], where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and

adding to the burden placed on the authority's resources. The Tribunal said:

'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'

36. The Commissioner is satisfied that the requests will never conclude until the Trust agrees with the complainant in relation to the substantive issue of his complaint. He considers that this will not happen and thus there is an unceasing potential for further requests about an issue where the disagreement between the parties was not possible to resolve to both parties satisfaction. He considers that the unceasing potential for further requests supports the Trust's view that answering the three requests would constitute a significant burden in both expense and distraction.
37. He also considers that the Trust has made a real effort to answer the previous requests that it received and indeed some of the requests that are currently under investigation. This is not a case where he considers that the Trust have fallen short and the requests needed to be resubmitted in order to deal with that problem.
38. Taken in the context of all the previous communications, the Commissioner considers that the Trust is right that the requests have caused it a significant burden in terms of expense and distraction.
39. It follows that he finds this factor in favour of the Trust and considers that this offers significant support to the Trust's argument that the requests are vexatious.

Whether the requests are designed to cause disruption or annoyance;

40. The Trust considers that the requests taken in their context can only be intended to disrupt and annoy it.
41. The Commissioner considers that the complainant does genuinely consider that he requires what he requested to pursue his complaints.
42. The Commissioner considers that this factor is most difficult to satisfy because it requires the public authority to illustrate the applicant's subjective intention. The Commissioner finds the complainant's own evidence most convincing for this point and considers that the requests were not made with the intent to cause disruption or annoyance.

43. He finds this factor in favour of the complainant and considers it offers no support to the Trust in establishing that the requests are vexatious.

Whether the requests have the effect of harassing the Trust or its staff;

44. The complainant contends that there is no evidence of these requests harassing the public authority or its staff, other than correctly holding it accountable for its actions. Instead, he believed it was important that the information held was out in the open so that the Trust's actions were open to scrutiny.
45. The Trust considered that the requests in their context have constituted part of a campaign orchestrated by the complainant (and groups with which he is associated) which has led to its staff being harassed and itself being harassed as an organisation. It explained that a number of individuals being singled out unreasonably in a manner that they would feel distressed about and consequently it now only responds as an organisation and not in the names of its junior members of staff.
46. It considers that the conduct of the complainant and the connection of the requests to that conduct would mean that it can make an objective case that the request is part of a campaign that has led to its staff and itself being harassed.
47. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the requests as harassing or distressing.
48. The Commissioner's guidance states that the features that could make a request have the effect of harassing the public authority or its staff are:
- The volume and frequency of correspondence;
 - The use of hostile, abusive or offensive language;
 - An unreasonable fixation on individual members of staff; and
 - The mingling of requests with accusations and complaints.
49. The Commissioner has already considered that there has been a heavy volume of requests and considers that the way that they are distributed – some requests being made before the previous ones had been answered – and the way that they are framed – for example the request dated 8 August 2011 was framed as an application for a court order - supports the Trust's view that the requests could have the effect of harassing it.
50. The Commissioner also considers that the requests are flavoured by the content of the complainant's previous interaction with it. The complainant has been resolute in making accusations of corruption

and/or negligence in relation to the Trust's preference for generic drugs. The complainant has also alleged that the Trust's treatment of him amount to torture and/or murder and the Commissioner considers that these allegations would be distressing for any member of staff. The Trust has illustrated that the complainant has copied these accusations very widely and that the court has considered them to be without merit.

51. The request also discusses two individuals one of whom used to work for the Trust. The Trust explained that it has received notification from its staff and connected individuals that they have felt harassed from the complainant's (and/or a group that is associated with him) pursuance of this matter. It has offered the Commissioner evidence that the individuals mentioned in the request are uncomfortable with how the complainant has presented them and has reported those incidents to appropriate bodies.
52. The requests while relatively cordial themselves are framed with the accusations that would cause a member of staff distress. The Commissioner considers that the complaints are clearly mingled within the requests in this case. For example the request dated 8 September 2011 contained:
 - *'the above named public officials have been extremely devious and expert at avoiding providing the answers. They are complicit in the criminal act of corruption family doctors in that since 2004 they, with others, paid illegal and unlawful cash incentives to businesses (GP surgeries) to only prescribe dangerous drugs made [sic *in] the third world China';*
 - *'Such payments endangering life are in violation of the Hippocratic Oath. Such payments to a partnership of individuals are illegal and unlawful under the Bribery and Corruption Acts before and as amended in 20120 and 2011. They are engaged in criminal acts and must disclose all data'; and*
 - *'Under the Nuremberg Principal 'I was only obeying orders', (Defence of superior orders is not a defence in law).*
53. The Commissioner considers that the effect of the complainant's interaction with the Trust has led to it considering that it has been harassed. He considers that the Trust has been placed under real pressure and its efforts to reduce that pressure have not been successful. He considers that the requests in their context can objectively be seen to be harassing both the Trust and its staff. This is enhanced by the frequency of communications, their hostile and often abusive nature.

54. The complainant has offered the Commissioner articles and facts that enable him to view his complaints as having merit. The Commissioner does not consider that this evidence comes close to justifying the harassment that the Trust and its staff have been experiencing.
55. Overall, he considers that this factor strongly supports the Trust's view that the requests are vexatious.

Whether the requests can otherwise fairly be characterised as obsessive;

56. As noted above, the Trust has provided the Commissioner with all the correspondence that it has exchanged with the complainant.
57. The Commissioner considers that the requests all originate in the clinical decision of a doctor to prescribe the complainant with a generic drug rather than the branded equivalent. The complainant disagreed with this clinical decision and has launched a campaign to get it to reconsider.
58. This campaign has led to the complainant making more and more serious allegations about individuals working for the Trust and medical professionals with little evidence.
59. The Commissioner considers that the campaign is disproportionate. Indeed the complainant has explained that the consequences of the decision is that he is:

'forced to make a 12 mile trip to the next town drop-in centre when his nearest surgery is only 400 yards from his home. Is this the way we treat the elderly if they refuse to take dangerous copy drugs made in China.'

60. The Commissioner considers that while this outcome is less than ideal for the complainant, it doesn't merit the number and nature of accusations made about individuals or how widely they have been shared. The complainant does have real concerns about generic drugs, however, the Trust and Practices must be allowed to undertake their primary function – providing care to individuals. The complainant's campaign is tying up both staff time and resources which cannot be used to facilitate providing care to people.
61. The Commissioner considers that all the evidence – the number of requests, the correspondence, the nature of the allegations and the pursuance of those allegations through every available channel – suggests that these requests constitute part of an obsessive campaign.
62. The Commissioner appreciates that there is importance in accountability and transparency where possible. However, against this he also feels that it is important that public authorities are able to use their resources

effectively to promote the public good. Protection should therefore be provided where a sequence of parallel requests become a continuous burden on the public authority's resources.

63. It follows that in this case, the Commissioner considers that the requests have an obsessive quality. He considers that there was little possibility of satisfying the complainant in this case. The Commissioner therefore accepts that a reasonable public authority would find these requests obsessive, so also finds in the public authority's favour on this factor.

Do the requests have value and/or a serious purpose?

64. The Trust argued that the requests did not have value or a serious purpose. It explained that it considered that the information that was requested either had already been provided or would be used to further harass particular individuals. The information had little value given that the court had already considered the complainant's claims as being meritless.
65. The complainant argued that his requests have a serious purpose because they will ensure transparency about an issue where there is real public concern about health of people and the integrity of the Trust. He also explained that the consequences of the behaviour that he was concerned about has had a really adverse impact on his health.
66. The Commissioner notes that there is considerable public concern about generic medicines. Indeed, the Department of Health (DoH) conducted a public consultation about whether or not to allow pharmacists to prescribe generic equivalents when prescriptions are for the branded medicines. The views were strongly polarised². The DoH's response was not to allow this to happen, although it did note that 85% of prescriptions were already for the generic medicines and so implied that this reduced the financial need for the pharmacists to vary what the doctor prescribed³.

²Department of Health, *'The proposals to implement 'Generic Substitution' in primary care, further to the Pharmaceutical Price Regulation Scheme (PPRS) 2009'* Consultation, http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/consultations/liveconsultations/DH_110517, January 2010.

³Department of Health, *'No Plans to Implement Generic Substitution of Medicines'*, http://www.dh.gov.uk/en/MediaCentre/Pressreleases/DH_120502, October 2010.

67. The complainant also explained that he considered he required the information for a court case that he was conducting against the Trust. The Commissioner notes that the judge at the court has the power to order the disclosure of information privately when they require it for a case and considers that this alleged purpose is a weak argument.
68. On balance, the Commissioner is satisfied that there was a serious purpose to these requests for information at the time they were made. The Commissioner recognises that there is an assumption built into FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He has therefore found that this factor favours the complainant.
69. The Commissioner must go on to consider whether the serious purpose is of sufficient weight to render the requests not vexatious. This is because he considers that it is prudent to view the position in light of the Information Tribunal's comments in *Coggins* (at paragraph 20), where it:

"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."

70. In this instance he does not consider that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious in this case. He notes firstly that most of the relevant information the Trust holds is already in the complainant's possession and that where the Trust has explained that information is not held, it has provided the Commissioner with its document retention scheme to prove this is so. He considers that while the requests have a serious purpose, there is not a substantial public interest (rather it is a private interest pursued by the complainant) in the information's disclosure.
71. In view of the overall context of these particular requests and his conclusions above about other aspects of this case, he considers that the serious purpose of the request does not come close to outweighing the other factors.

72. For the avoidance of doubt, the Commissioner does not consider that a serious purpose behind a request ought to permit a complainant to accuse, harass or harangue a public authority or its staff, with impunity. While occasional intemperate comments in frustration or the heat of the moment are understandable and, in the main, excusable, the Commissioner does not condone widespread, calculated and premeditated unproven allegations that would be designed to cause distress.

Could a reasonable public authority refuse the three requests on the grounds that they are vexatious?

73. The Commissioner recognises that there is sometimes a fine balancing act between protecting a public authority from meritless applications and the promotion of the transparency in the workings of the authority.

74. The Commissioner has considered all the evidence presented in this case, including the history and context of the request.

75. On one hand the Commissioner has been satisfied that the requests have a serious purpose. On the other, he also considers that the requests have caused a significant burden in terms of expense and distraction, were obsessive and have harassed the public authority and its staff.

76. As noted above, the Commissioner considers that the requests meeting two of his criteria would be strong evidence that the requests were vexatious. In this case, the requests have met three of his factors and he considers that those factors that were met compellingly indicate that the requests can be characterised correctly as vexatious.

77. He considers that a reasonable public authority can characterise these requests as vexatious and that section 14(1) has been applied appropriately by the Trust.

78. He therefore considers that these three requests do not need to be considered any further by the Trust.

Section 17(5)

79. Section 17(5) requires that when a public authority considers a request is vexatious it should issue a notice saying so within 20 working days (subject to section 17(6) which is not relevant in relation to these particular requests)

80. The Trust didn't issue such a notice and was therefore in breach of section 17(5). However, the Commissioner does not require any

remedial step to be taken because this decision notice explains why the Trust considers the requests were vexatious.

Section 17(6)

81. In its letter dated 20 September 2011 the Trust explained that for the requests that it received about generic prescribing, prescribing and its system used to prescribe that:

'[It] will not respond to any further questions in this regard from you or from any other person or organisation with whom we have good reason to believe you are associated, relying on section 14(2) of the FOIA.'

82. The complainant specifically asked whether the Trust's position in this regard accorded with the FOIA and so the Commissioner has gone on to consider this issue substantively.

83. Section 17(5) requires the Trust to issue a refusal notice for each request it considers vexatious or repeated unless the conditions in section 17(6) apply.

84. The Commissioner has therefore considered whether section 17(6) is being relied upon appropriately in this regard. This provision is designed so that where a series of requests are vexatious and/or repeated, the public authority is not required to continue issuing new notices for every request it receives on the same subject. Instead it can issue one section 17(6) notice and comply with FOIA in respect to future requests on those matters.

85. There are three requirements for section 17(6) to apply:

(i) the public authority is relying on section 14;

(ii) it has given the applicant a notice stating this; and

(iii) it would in all circumstances be unreasonable to serve a notice under subsection 17(5) to the current request.

86. The first two elements are clear in this case. The Trust has issued the notice dated 20 September 2011 explaining that it considers that subsequent requests about certain matters are likely to be repeats.

87. The third element is more complex. When considering whether in all circumstances it would be unreasonable to serve a notice under section 17(5) the Commissioner has carefully considered the following that favour it being unreasonable in this case:

- The information request arose out of a single grievance – that being the prescription of a generic equivalent to a branded medicine;
 - That this has expanded to include challenges on many levels of increasing ferocity;
 - This was a campaign using every available method of challenge;
 - The complainant did not wait for a response before making the next request and made a large number of requests and/or communications about the same matter in a short period of time; and
 - The Commissioner considers that there was no prospect of the complainant being happy with the response.
88. Against the above, he has considered the following that does not favour it being unreasonable to serve separate notices:
- The notice issued on 20 September 2011 purported to refuse all future requests about certain topics on the ground that they would be substantially similar or repeated – the Commissioner considers that the categories of information purported to be caught are very wide and not time specific and this makes it less reasonable;
 - The issuing of a new notice would not cause a great deal of work for the Trust and would enable the complainant to understand where he stands in relation to each request he has made – this may have led him to make fewer requests; and
 - The decision notice being issued in this case explains that some requests can be correctly characterised as vexatious. However, the Commissioner emphasises every request must be considered on its own merits. The notice that has been issued causes uncertainty about which requests of the complainant were caught by it.
89. As stated above it is important that public authorities receive protection from meritless applications under FOIA. He notes that this must be the intention of including section 17(6) in FOIA.
90. However, the Commissioner does not consider that on the circumstances of the case it was unreasonable for the Trust to be required to continue to issue separate notices in this case. He has concluded that this is the case because the response dated 20 September 2011 is too broad and uncertain about when it would and when it would not answer requests. He considers that a notice would have needed to be more specific to enable it to rely on section 17(6) appropriately.

91. He therefore finds this point in the complainant's favour. The Trust must continue to consider each and every request on its own merits. It may be able to issue a notice that complies with section 17(6) in the future, but for it to be reasonable it will need to be more specific and limited in nature.
92. He does not require any remedial steps to be taken in this case, although he does expect the Trust to carefully consider his conclusions in relation to section 17(6) and review its position accordingly.

Right of appeal

93. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

94. 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.
95. 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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Appendix A – the requests that were considered in this complaint

Request one - dated 24 August 2011 (the answers that were provided are marked in italics)

- [1] The cost of prescription incentives to each GPs surgery for 2010 until 2011 paid July 2011. Please identify the surgeries by name.
- *Information already disclosed in response to a previous request. Payments are not made to individual GPs. The Commissioner can confirm it was disclosed..*
- [2] Confirm prescribing initiative payments to the doctors' [names redacted] of [Surgery redacted] in 2004 when I was [accusation redacted].
- *The information is not held. Was destroyed in accordance with its retention and disposal schedule.*
- [3] Confirm the GPs at [Surgery Redacted] were receiving incentive prescribing payments when I was allocated that surgery in 2004.
- *The information is not held. Was destroyed in accordance with its retention and disposal schedule.*
- [4] Please confirm the GPs at Belton Medical Centre were receiving incentive prescribing payments in 2006 at the time of refusing me treatment or patient status.
- *Belton Medical Centre is Millwood Practice's branch surgery. Millwood Practice did receive a payment in 2006/07.*
- [5] For clarity of the court please confirm GP's are operating a partnership and by default it is a business.
- *Request refused under section 14(2) on 20 September 2011.*
- [6] [Individual A redacted] Please confirm that [Individual A redacted] is still employed as [role redacted] or operating under another title.
- *Information not held (about whether [Individual A redacted] is employed elsewhere as described).*

Request two – dated 8 September 2011

- [7] Total incentive payments to GY&W surgeries for years 2010/11.
- *Request refused under section 14(2) on 20 September 2011.*

- [8] List of payments to each surgery naming the surgeries
- *Request refused under section 14(2) on 20 September 2011.*
- [9] Total payments made to the Millwood Surgery for each year since 2005 until July 2011
- *Request refused under section 14(2) on 20 September 2011.*
- [10] Total payments made to Benton Medical Centre for each year since 2006 until 2011
- *Request refused under section 14(2) on 20 September 2011.*

Request three – dated 9 September 2011 that were referred to the Commissioner (the answers that were provided are marked in italics)

- [11] The total cost of prescription incentives to each of the GP for 2010/2011. [You need not ID them by name but should include the number of current active GPs.
- *Information provided in response to an earlier request – the money was provided to the surgeries and not individual GPs.*
- [12] Confirm payment to the doctors' [names redacted] in 2004 when I was a patient. I do not require what each received at this stage.
- *No information held. The information was only kept for six years and has been destroyed in accordance with its retention and disposal policy.*
- [13] Confirm the GPs at Millwood Surgery were receiving incentive payments when I was allocated that surgery in 2004.
- *No information held. The information was only kept for six years and has been destroyed in accordance with its retention and disposal policy.*
- [14] Please confirm the GPs at Belton Medical Centre were receiving incentive-prescribing payments in 2006 to the time of [accusation redacted].
- *Yes a payment was made.*
- [15] Please confirm [Individual A redacted] is still employed as prescribing adviser or operating under another title. If so - what is that title.

- *Information not held (about whether [Individual A redacted] is employed elsewhere as described).*

[16] Is the above named [Individual B redacted] I believe to be the husband of [Individual A redacted] employed directly or indirectly or as a consultant by Great Yarmouth and Waveney PCT or its associated NHS organisations.

- *[Individual B redacted] is not employed by the Trust itself. No recorded information held about whether he is employed elsewhere.*