

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2012

Public Authority: Blackburn with Darwen Teaching Care Trust
Plus

Address: Guide Business Centre
School Lane
Blackburn
Lancashire
BB1 2QH

Decision (including any steps ordered)

1. The complainant requested information about the public authority's decision to decommission certain podiatry services. The public authority initially refused the request under section 14 of the FOIA. The Information Commissioner disagreed that the request was vexatious and consequently the public authority agreed to disclose the requested information to the complainant during the investigation. The complainant disputed that the public authority had disclosed all the information that it held. The Commissioner's decision is that the public authority initially failed to comply with section 1(1)(a) of the FOIA, because it had inappropriately relied on section 14. However, following his intervention the Commissioner is satisfied that the public authority has now complied with the requirements of section 1 of the FOIA and has not ordered it to take any steps.

Background

2. The complainant is a representative of a local patient action group and is concerned that recently restructured podiatry services are not meeting the needs of elderly and vulnerable members of the community. He has been in dispute with the public authority over the decommissioning of the previous service for 18 months. His request for information came towards the end of an extensive exchange of correspondence with the public authority, by which time relations between the two parties had become increasingly strained.

Request and response

3. On 1 June 2012 the complainant wrote to the public authority and requested the following information.

"I should like full details of the assessment and justification of the decision to decommission Low Level Foot Care to older people in Blackburn with Darwen."

4. The public authority responded on 14 June 2012. It stated that it was treating the complainant's request as an FOIA request. It also referred to earlier correspondence and offered to meet with him to discuss his wider concerns about low level community footcare provision. It explained that if he declined its offer it would not enter into further correspondence on the issue once his FOIA request had been dealt with.
5. The complainant wrote to the public authority the same day and asked it questions about the policies referred to in its letter. Regarding the public authority's intention to end contact over the matter, he asked: *"Do you mean that if I agree to meet you then you will continue to enter into further correspondence?"*.
6. On 26 June 2012 the public authority issued a refusal notice. It stated that it had nothing further to add to its letter of 14 June 2012. It did not cite an exemption or any other valid reason under the FOIA for refusing the request.
7. The complainant spoke with the public authority on 28 June 2012, as a result of which it conducted an internal review. On 2 July 2012 it wrote to the complainant, enclosing a copy of the minutes of a meeting and stating:

"Following a review of all the correspondence which is quite extensive and complex covering several departments, we are satisfied that you have received all information relating to your enquiry regarding Low Level Foot Care."

8. It explained that it would not continue to correspond with the complainant, as it considered his requests to be vexatious, as defined under section 14 of the FOIA. It stated that since March 2011 his correspondence had posed a significant burden both in terms of expense and distraction.

Scope of the case

9. The complainant contacted the Information Commissioner on 30 June 2012 to complain about the way his request for information had been handled. Specifically, he asked the Commissioner to consider the public authority's claim that his request was vexatious.
10. Having investigated the complaint, the Commissioner concluded that the request was not vexatious. The public authority accepted the Commissioner's conclusion and disclosed several documents which focussed on its decision to make changes to its podiatry services.
11. However, the complainant indicated that he was not happy with the disclosure, commenting that he had no way of knowing whether what had been supplied to him constituted the totality of what the public authority held about the decision. When asked by the Commissioner to specify what information he considered might be outstanding, he stated:

"How may I be sure the [public authority] sent the information if they do not send again all that they claim they sent me in the first place."
12. Since the public authority accepted the Commissioner's conclusion that the request was not vexatious, and consequently made a disclosure of information, this decision notice is primarily concerned with the issue of whether it has responded fully to the complainant's request for information dated 1 June 2012.

Reasons for decision

Section 1 - is further recorded information held?

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. The Commissioner is not expected to prove categorically whether the

information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.

The complainant's view

15. While expressing dissatisfaction with the public authority's response, the complainant has been unable to specify what further information the public authority might hold that it has not sent him. He has instead asked for a complete re-disclosure by the public authority of all the information it has previously provided to him, so that he might assess for himself whether it has disclosed everything.
16. The Commissioner notes that the complainant has not claimed that he no longer has the information that has previously been sent to him. At the outset of the investigation the Commissioner asked him to provide copies of the information he had previously received from the public authority, to support his complaint. He responded that he did not have the time or resources to go through what he had previously received and pull out what may be pertinent to his request, and instructed the Commissioner to obtain copies from the public authority instead.
17. The Commissioner further notes that the complainant appears to be conflating his dissatisfaction with the way the decision to decommission the service in question was made, with the way the public authority responded to his request. He has complained to the Commissioner about the interpretation the public authority placed on the information it used to reach its decision, and although he has been informed that this is not a matter the Commissioner can address, he continues to point to it as a grievance when asked to articulate his concerns about breaches of the FOIA.

The Information Commissioner's investigation

18. The public authority provided the Commissioner with a large file containing the correspondence it had had with the complainant since March 2011 regarding the change to the podiatry service.
19. Having examined the file, the Commissioner noted that prior to making his FOIA request, the complainant had been supplied with the following information by the public authority.

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

Information	Format	Date provided
Explanation of new community podiatry arrangements	letter	17/3/11
Podiatry assessment Guidance Tool used to assess patients with a view to receiving podiatry treatment	document	17/3/11, again 10/6/11
Guidance for Commissioners and Service Providers on high-quality footcare service and how to deliver this in a way that suits the needs of different groups of older people locally	Footcare Services for Older People document (a Department of Health resource pack)	6/5/11
An assessment of the new service specification for low level podiatry care, developed by the public authority using the DoH guidance	Community Podiatry Service: Equality Impact Assessment and Human Rights Screening document	6/6/11, again 1/11/12
Scoring matrix for measuring likely impact of proposals	blank Equality Impact Assessment and Human Rights Screening form with impact assessment risk grading severity matrix	21/6/11
Outline of proposed new pilot scheme for low level community footcare	letter	8/3/12
Explanation that budgetary issues have driven local service provision	letter	31/5/12

20. The complainant discussed the contents of many of these documents in subsequent correspondence with the public authority, and so the Commissioner is satisfied that this demonstrates that they were received by the complainant.
21. Each of these items of information put the decision to decommission the podiatry service in some sort of context, with the Department of Health document being particularly significant. However, the Commissioner considers them peripheral to the information which was described in the request of 1 June 2012, which specifically asked for the justification for and details of the assessment of the decision to decommission the public authority's existing community podiatry services.

22. The public authority responded to the 1 June 2012 request by supplying the following information.

Information	Format	Date provided
Confirmation that a review of the decision to decommission podiatry services had taken place and its outcome	minutes of the Contract and Procurement Committee meeting 26 August 2011	2/7/12
Service evaluation of existing podiatry arrangements concluding that the service should be discontinued	Disinvestment Evaluation form: Podiatry (low level footcare)	1/11/12
An assessment of the proposed replacement podiatry arrangements.	Community Podiatry Service: Equality Impact Assessment and Human Rights Screening document	1/11/12 (and previously, on 6/6/11)
Information for patients about the new podiatry services	Standard letter and leaflet	1/11/12

23. The disclosed information comprises the service evaluation process which led to the decision to decommission the service, together with risk assessments and confirmation of a review of the decision. The public authority states that it does not hold any other information which is covered by the request.
24. The complainant is not able to specify what other information he thinks the public authority might hold or give reasons as to why it might be withholding further information. The assistance he has been able to give the Commissioner in investigating his complaint, in terms of supporting information, has been limited.
25. In contrast, the public authority has provided a great deal of information about the exchange of correspondence that has taken place between the two parties. The Commissioner has looked through the correspondence between the complainant and the public authority (which includes internal email chains discussing appropriate responses to him) and notes that it contains no suggestion that further information exists about the decision to decommission which has not been provided to him. It contains no reference to documents or to reports or to policies which might contain further information about the decision taken.
26. The Commissioner also notes from the correspondence that the public authority has been willing to meet with the complainant on numerous occasions to discuss his concerns and to explain its arrangements for podiatry provision. Prior to the breakdown of the relationship between

the two sides he considers it fair to characterise the public authority's attitude as helpful and open in its dealings with the complainant.

27. From the information he has had before him the Information Commissioner is therefore satisfied that, on the balance of probabilities, the public authority has supplied all the information it holds which is described in the complainant's request.
28. However, the Commissioner has determined that the public authority initially failed to comply with section 1(1)(a) of the FOIA because it refused to reply to the complainant's request, inappropriately citing section 14 of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Jon Manners
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