

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 May 2013

**Public Authority:** North Bristol NHS Trust  
**Address:** Frenchay Hospital  
Beckspool Road  
Frenchay  
Bristol  
BS16 1JE

### **Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to North Bristol NHS Trust ("the Trust") for copies of Adverse Incident Management and Serious Untoward Incident reports included in the Bristol Histopathology Inquiry. The Trust refused the request under the section 40 (personal information) and section 41 (information provided in confidence) exemptions but during the course of the Commissioner's investigation said that it was also seeking to argue that the request was vexatious under section 14(1) of FOIA. The Commissioner has investigated the complaint and found that the request is vexatious and that section 14(1) applies.
2. The Commissioner requires no steps to be taken.

### **Request and response**

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3. On 23 April 2012 the complainant made a freedom of information request for copies of AIMS [Adverse Incident Management System] and SUI [Serious Untoward Incident] reports that had been referred to in the report of an Inquiry into histopathology services in Bristol. The Inquiry was commissioned following allegations of misdiagnoses relating to patients under the care of consultants of North Bristol NHS Trust whose histopathology had been undertaken by pathologists at the neighbouring University Hospitals Bristol NHS Foundation Trust. The request read as follows:

*Under the FOIA, we request the following:*

- i. Anonymised copies of all the AIMS [Adverse Incident Management System] and SUI [Serious Untoward Incident] reports raised in relation to the misdiagnosis concerns expressed by doctors, UH Bristol's as well as NBT's.*
  - ii. A summary for each AIMS and SUI report of the outcome of the incident investigation, including what lessons were learned.*
  - iii. For each AIMS and SUI report, whether the doctors who raised the concerns were formally advised of the outcome of the investigations.*
4. The Trust responded on 11 May 2012 and explained that some of the specific AIMS reports sought by the complainant were not held. Where information was held the Trust said that it was being withheld under section 40 of FOIA, the personal information exemption, because disclosure would contravene the data protection principles.
  5. On 8 June 2012 the complainant asked the Trust to carry out an internal review of its handling of the request. In doing so she explained that she was asking for information with patient details redacted so as to protect patient confidentiality.
  6. The Trust presented the findings of its internal review on 13 August 2012 at which point it upheld its earlier decision to refuse the request under section 40(2). It also now said that where it held information which related to deceased persons, the information was being withheld under section 41 (information provided in confidence) because it owes a duty of confidence and a breach of which would be actionable.

## **Scope of the case**

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7. On 28 August 2012 the complainant contacted the Commissioner to complain about the Trust's decision to refuse her request.
8. During the course of his investigation the Trust informed the Commissioner that it also wished to rely on section 14(1) of FOIA on the basis that the request was vexatious.

## **Reasons for decision**

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9. The Commissioner has first considered whether section 14(1) would apply to the complainant's request. Section 14(1) provides that a public

authority is not obliged to comply with a request for information if the request is vexatious.

10. When considering whether a request can be reasonably characterised as vexatious the Commissioner's approach is to consider the context and history of the request to assess whether it would fall into one or more of the following factors.
  - 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
  - whether the request has any serious purpose or value
11. The threshold for when a request is considered to be vexatious need not be set too high and it is not a requirement for all categories to be relevant to a request. However, where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to a public authority's claim that s.14 is engaged.
12. The Trust provided the Commissioner with its arguments in relation to each of the above criteria but also referenced the decision of the Upper Tribunal in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 [AAC]* which it considered relevant to this case. The Trust's arguments as to why it believes the request is vexatious and the Commissioner's observations are outlined below, under the relevant headings.

### Significant Burden

13. The Trust has said that since 2011 it has received 27 freedom of information requests from the complainant. Many of the requests in fact contained multiple requests for information and the Trust calculates that in total there have been 126 different information requests of which 102 relate to histopathology or breast care services provided by the Trust or other local healthcare bodies and which featured in the Inquiry. In addition there has been other correspondence and the complainant has received letters from the Trust's Medical Director, Chief Executive and Chairman.
14. The Trust acknowledges that in isolation this request may perhaps not impose a significant burden in terms of expense, however, when seen in

the context of the complainant's previous communications with the Trust it is clear that a significant burden has been imposed.

15. Having reviewed a schedule detailing the correspondence between the Trust and the complainant the Commissioner would agree that a significant burden has been imposed on the Trust through having to respond to the complainant's requests and other correspondence. At times the Trust has been in contact with the complainant on an almost daily basis and as explained above, many of the requests have been very long and complex to deal with. Given the pattern of behaviour shown by the complainant it is highly likely that complying with this request would lead to further requests, thereby imposing a further burden on the resources of the Trust and distracting it from its core functions.

Designed to cause disruption or annoyance

16. The complainant's requests are for information related to AIMS forms and Serious Untoward Incident Reports that were mentioned in the Bristol Histopathology Inquiry which the Trust said had been subject to significant enquiry and follow up review since its original publication. The Trust said that it could not see what constructive purpose was served by this request and that it was concerned that it was designed to cause disruption or annoyance.
17. Whilst the Commissioner has no doubt that the effect of the complainant's requests for information has been to cause disruption or annoyance he is not satisfied that this is the intention of the request. The Commissioner is aware that the complainant has deeply felt concerns about the issues on which she has corresponded with the Trust and he has not found evidence of a clear intention to cause disruption and annoyance in the correspondence he has seen. Therefore he has not taken this into account as a factor indicating that the requests may have been vexatious.
18. Whilst he does not accept that the intention of the requests was to cause disruption or annoyance the Commissioner has given thought to the motive of the request. The idea of considering the motive of a request was put forward by the Upper Tribunal in the *Dransfield* case where it suggested that this was one of the factors which ought to be taken into account when deciding whether a request is vexatious. Referring to this test the Trust said that in its view the actions of the complainant have demonstrated the characteristics of a "motivated intruder" whereby she has tried to pursue her pre-conceived views in the face of the findings of the independent Inquiry and the assessment of regulators. It said that whilst initial contact with the complainant had

been constructive the relationship had now broken down. The *Dransfield* decision referred to the idea of "vexatiousness by drift" where in the context of a series of requests and correspondence a later request has become disproportionate to whatever the original enquiry was. This would appear to be the case here and points to the vexatious nature of the request.

Has the effect of harassing the public authority or its staff

19. Whilst there may not be anything in the tone of the request of 23 April 2012 that is harassing it is appropriate to consider the request in the context of previous correspondence with the complainant. The Commissioner has been referred to examples of previous correspondence which has led him to conclude that it was reasonable for the Trust and its staff to feel harassed and/or distressed by some of the comments made.
20. The Commissioner is also aware that the complainant has made allegations about individual members of staff and has complained to professional regulators about their conduct. The Commissioner has also been informed of one specific and significant case of perceived harassment by one of the Trust's staff resulting from the actions of the complainant. The Commissioner is satisfied that the request has had the effect of causing harassment to the Trust and some of its staff.

Serious purpose or value

21. The Trust has explained that the request asks for information related to cases included in the Histopathology Inquiry report which it says have been subject to significant scrutiny and follow up since the original publication. It argues that there is no serious purpose or value in the complainant seeking access to incident reports that go back many years and have been subject to significant external scrutiny with a full Inquiry report shared with the public. Whilst it says that it cannot dispute the complainant's perceived serious purpose within the request, in the context of the Histopathology Inquiry, and all that has followed it, it cannot see any material value in the request.
22. The Trust suggests that no response to the complainant's requests is deemed good enough "irrespective of the professional qualifications, independence or credibility of those providing them". The complainant, it says "pre judges any response that provides an opinion contrary to her own, as invalid". The Commissioner would agree that when seen in the context of the complainant's previous correspondence with the trust this request has lost its serious purpose or value. The request would appear

to be more about challenging the Trust's position and pursuing her complaints about what she sees as the flawed Histopathology Enquiry.

### Obsessive or manifestly unreasonable

23. The Trust argues that the request should be seen as obsessive or manifestly unreasonable in the context in which it is made, following a detailed Inquiry, the findings of which she does not agree with. The volume, nature and tone of the request demonstrate, in its view, an obsessive approach to the histopathology issues.
24. As the Commissioner has already referred to above, the complainant has made a significant number of requests to the Trust on the same issue. Responses to her requests by the Trust only seem to prompt further requests. In his view a request is likely to be obsessive where an individual continues with a lengthy series of requests even though they already have independent evidence on the issue, such as a report from an independent investigation. The background to this case is that an independent Inquiry was undertaken by the neighbouring University Hospitals Bristol NHS Foundation Trust after concerns were expressed about misdiagnoses of patients. The purpose of the Inquiry was to review the performance of histopathology services, to consider whether appropriate action had been taken to address those concerns and to make recommendations to ensure the provision of safe and effective services in future. The Inquiry was made up of a panel of experts and was chaired by a senior barrister. The Inquiry presented its findings in December 2010 in a 200 page report which is publicly available. The Commissioner also understands that further reviews were also carried out by the Care Quality Commission and Monitor.
25. The issues raised by the complainant in her request have been discussed extensively and considered by independent inquiries but it is clear that the complainant is dissatisfied and is determined to pursue this matter. In light of this, and given the volume of correspondence and the amount of information already provided to the complainant, the Commissioner considers it reasonable to characterise the request as obsessive.

### Conclusions

26. The Commissioner recognises that the complainant has deeply felt concerns about the issues raised in the Histopathology Inquiry and about which she continues to correspond with the Trust. However the Commissioner has come to the conclusion that any serious purpose for her request which may have existed in the complainant's first contact with the Trust has now been outweighed by the harassing and obsessive nature of her requests. Any serious purpose in the request is

outweighed by the drain on resources and the diversion from the public functions of the Trust.

27. In the Commissioner's view the Trust has taken a reasonable and proportionate approach having replied in full to earlier requests which were very detailed and time consuming. Only when the complainant persisted with her requests on the same issues, to the point of them becoming duplicative, did it decide to apply section 14. In these circumstances, and given the volume of correspondence on these issues and the fact that the issues have been subject to significant external scrutiny, the Commissioner is satisfied that the request is vexatious and that section 14(1) has been applied correctly.

## Right of appeal

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28. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

29. 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.
30. 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 .....**

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