

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2013

Public Authority: Bristol NHS Primary Care Trust
Address: South Plaza
Marlborough Street
Bristol
BS1 3NX

Decision (including any steps ordered)

1. The complainant has requested information in relation to two statements made in Bristol NHS Primary Care Trust's ("NHS Bristol") Histopathology Review Report from April 2011. As the subject matter was deemed to be the same as a number of previous requests, the public authority refused this request using the exemption under section 14(1) of the FOIA. Having considered this request, alongside other requests made by the complainant the Commissioner has determined that NHS Bristol was correct to refuse the request on the basis that it was vexatious under section 14(1).

Request and response

2. On 22 October 2012, the complainant wrote to NHS Bristol and requested information in the following terms:

"This request arises from the following statements made in the NHS Bristol Histopathology Review Report dated April 2011

Page 9

"The Review Panel's view was that it was unfortunate that there was no further action taken to follow up Ms Lee's email to Dr Morse, Medical Director at NBT after the Joint Health Scrutiny Committee meeting of the 15 October 2007."

Please provide a copy of Ms Lee's email to Dr Morse.

Page 9

"On being informed of the concerns relating to clinical quality and patient safety Ms Lee pursued the matter with colleagues at both UHB and NBT on the 23 September 2008. Ms Lee entered the concerns on the Commissioning Directorate risk register, making an assessment that scored the risk with a potential risk consequence of severe (4) by a probability of improbably (2). The resulting risk score, 8, was below the threshold for inclusion on the Corporate Risk Register. Ms Lee briefed Ms Evans, at this time. Although the risk score was low Ms Lee felt that the potential was such that the matter should be raised with Ms Evans for information."

Please provide the exact wording of the risk entered on the Commissioning Directorate Risk Register that was deemed to have a probability rating of 2?

Page 9

"There was clear evidence of risk management at Director level during September and October and on 4 November 2008."

Please provide copies of the documents that NHS Bristol provided to the review panel that provides this "clear evidence"

Page 10

"However NHS Bristol learnt during February 2009 that the expected external review of histopathology specimens across both the UHB and NBT had not been taken forward. This led to the risk being reviewed on 3 March 2009. The revised risk score automatically moved the issue to the Corporate Risk Register, which was received by the Board on the 26 March 2009."

What wording was used to record the issue in the Corporate Risk Register? What was the severity score? What was the probability score?

Page 10

"The escalation process used by NHS Bristol to raise the concerns about the histopathology service with UHB focused on NHS Bristol's Director of Commissioning and Chief Executive and their engagement with the Trust's Medical Director and Chief Executive."

Please provide copies of the evidence of "engagement" between NHS Bristol's Director of Commissioning and Chief Executive with UHB's Medical Director and Chief Executive, the purpose of which was to raise concerns about the histopathology service. Did the NHS Bristol Executives Evans and Lee ask UHB for information about specific cases? If so, please provide the evidence.

Page 11

"Ms Evans demonstrated that repeated requests to NBT were made by herself and Ms Lee for information about specific cases. Despite these requests there is no evidence that this information was made available until Ms Evans personally visited NBT on the 24 June 2009."

Please supply the documentary evidence that demonstrates that Ms Evans made repeated requests to NBT for information about specific cases. "

3. NHS Bristol responded on 15 November 2012. It stated that following the decision to refuse a previous request of 12 December 2011 as vexatious under section 14(1) of the FOIA; it had informed the complainant that any future requests relating to Histopathology and Pathology prior to 19 November 2011 would also be considered vexatious and refused. As such the request in this case was being refused as vexatious under section 14(1) as the information related to histopathology and pathology issues prior to 19 November 2011.
4. The complainant did ask for an internal review of this decision and although NHS Bristol was not obliged to carry out a review after determining the request was vexatious; a review was conducted and the outcome communicated to the complainant on 12 December 2012.
5. In the internal review response NHS Bristol upheld its decision to refuse the request as vexatious citing the previous decision and the decision notice issued by the Commissioner upholding this¹.

Scope of the case

6. The complainant contacted the Commissioner on 13 January 2013 to complain about the way her request for information had been handled. The complainant considered that NHS Bristol had relied on section 14(1) to refuse the request in order to avoid carrying out a public interest test and having to disclose information.
 7. The Commissioner considers the scope of his investigation to be to determine if the request which is the subject of this Notice is vexatious taking into account his previous decision and the specific information requested in this case.
-

¹ ICO Decision Notice FS50449652

Background

8. The Commissioner has previously issued a decision notice relating to a request made to NHS Bristol on 19 November 2011 for information on pathology services. In this decision the Commissioner upheld NHS Bristol's application of section 14(1) on the basis that the complainant up to the 19 November 2011 had sent 68 pieces of correspondence regarding histopathology and pathology services and 37 requests under the FOIA.
9. At the time of this request NHS Bristol had also informed the Commissioner and the complainant that it would not respond to further requests relating to historical issues with pathology services, particularly requests related to the review of pathology services in the Bristol area.

Reasons for decision

10. Section 14(1) of the FOIA provides that a public authority is not obliged to deal with a request if the request is vexatious.
11. The Commissioner's approach to determining what constitutes a vexatious request is set out in his guidance on section 14. This outlines a number of factors that may be relevant as to whether a request is vexatious, namely whether:
 - It would create a significant burden in terms of expense and distraction;
 - It is designed to cause disruption or annoyance;
 - It has the effect of harassing the public authority;
 - It can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - It clearly does not have any serious purpose or value.
12. In establishing which, if any of these factors apply, the Commissioner will consider the history and context of the request. In certain cases a request may not be vexatious in isolation but when considered in

context it may form a wider pattern of behaviour that makes it vexatious. This approach has been upheld by the Information Tribunal².

13. When considering a public authority's reliance on section 14(1) the Commissioner also has regard for decisions of the Tribunal³ in which it was established that the consequences of finding a request vexatious are not as serious as determining conduct to be vexatious and therefore the threshold for vexatious requests need not be set too high.
14. The Commissioner has taken into account the above and the fact that NHS Bristol has advised that any requests made by the complainant in relation to historical issues with pathology and histopathology services will be vexatious when forming his decision in this case. This request relates to the Histopathology Review which was part of the review of these services in Bristol. The Commissioner's previous decision related to a request about pathology services and the decision to deem the request vexatious was based on the volume of previous correspondence and the obsessive nature of previous requests stemming from dissatisfaction with the outcome of the inquiry into pathology services.
15. Based on this, the Commissioner considers this request clearly relates to historical issues relating to pathology services and is for information prior to 19 November 2011. As such, for the same reasons as he set out in his previous decision notice the Commissioner has decided that this request is also 'vexatious'.

² *Rigby v IC & Blackpool, Fylde and Wyre Forest Hospitals NHS Trust (EA/2009/0103)*

³ *Hossack v IC (EA/2007/0024) and Welsh v IC (EA/2007/0088)*

Right of appeal

16. 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

17. 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.
18. 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
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF