

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2014

Public Authority: Dr L Cartwright
Senior Partner
Harvey Practice

Address: 18 Kirkway
Broadstone
Dorset
BH18 8EE

Decision (including any steps ordered)

1. The complainant requested information regarding records kept by the Harvey GP Practice (the practice). For purposes of this notice the senior partner is named as the relevant public authority.
2. The practice refused the request under s14 FOIA as it was considered vexatious.
3. The Commissioner's decision is that the request is vexatious and that s14 was applied correctly. The practice is therefore not obliged to comply with the request.

Request and response

4. On 10 January 2013 the complainant made the following request:

"... how many GP patient records have been affected by the problems that the MDU has identified in its letter."

The letter referenced by the complainant dated from 2007 and was obtained from a company named MDU Services Ltd.

5. On 15 January 2013 the practice informed the complainant that the exemption at s14 FOIA applied to the request on grounds that it was vexatious.

Scope of the case

6. The complainant contacted the Commissioner on 15 January 2013 to complain about the way her request for information had been handled.
7. This decision notice addresses the practice's consideration of the request as vexatious under s14(1) FOIA.

Reasons for decision

Section 14(1) (480313 DN)

8. Section 14 FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
9. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011)¹ places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
10. The Upper Tribunal's judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
11. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"

¹ <http://www.osspsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

12. The Commissioner's guidance² on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

Background

13. The complainant registered with the practice in 1998. In July 2000 she applied for access to her medical records and this was provided.
14. There followed a period of protracted correspondence between the complainant and the practice. This involved the complainant's requests for amendment of her records, for electronic copies of her records and for copies of any handwritten records. It culminated in 2004 with the practice's decision to remove the complainant from its lists and to send her records to the Dorset Family Health Services Agency (FHSA). In line with regulations the practice kept an electronic copy of the archived records.
15. This led to further correspondence in which the complainant questioned the right of the practice to keep such computerised records. The complainant also questioned whether the practice had the right to maintain wholly computerised records before October 2000.

Burden of request and level of disruption, irritation or distress

16. The request is linked to the same issue concerning the records held by the practice. It is an issue which the complainant has been pursuing over the past 13 years. The Commissioner considers the request to be a further attempt to progress an argument that has already been addressed. As such he considers the request to be obsessive.
17. During the course of her 13 year correspondence the complainant has complained to the Primary Care Trust and the Healthcare Commission about the practice. However, neither body considered action against the practice to be warranted. The complainant threatened the practice with court action in 2002 and brought a claim against it. This was struck out by the court. The complainant threatened the practice with court action again in 2007.

²http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

18. During this period the complainant involved the Parliamentary Commissioner for Administration, the Strategic Health Authority and the General Medical Council with her complaint against the practice. Again no action regarding the practice's record keeping was considered to be warranted by these bodies.
19. The complainant raised the issue of the practice's record keeping with the Information Commissioner in 2001 and again in 2004. She has continued to email the ICO about this issue from 2004 to date. In 2002 the Commissioner informed the complainant that he considered it unlikely that the practice had breached the Data Protection Act 1998 (DPA). In 2006 the Commissioner again concluded that it was unlikely that the practice had breached the retention provisions of the DPA. Despite these conclusions the complainant has continued to email the ICO about the issue.
20. A formal decision notice (FS50309685) was issued on 29 November 2010 by the Commissioner. He found the complainant's request concerning the practice's record keeping to be vexatious. The complainant appealed the Commissioner's decision to the Information Rights Tribunal. The tribunal rejected the appeal on 23 May 2011 and upheld the Commissioner's decision notice.
21. In reaching its judgment the tribunal considered that the cumulative effect of the complainant's attempts to find avenues to address the same issue from different angles was obsessive. It found the effects of her correspondence to be undoubtedly harassing. The tribunal was also satisfied that the complainant had inundated the practice manager with information requests and arguments to the point of distress.
22. The practice has expressed its concern that responding to the complainant's request will lead to yet further correspondence and requests concerning its handling of issues raised by the complainant.
23. The Commissioner is satisfied that past experience has demonstrated that any response from the practice will lead to further correspondence from the complainant and in turn will lead to yet further burden upon the practice and resultant distraction from its core responsibilities to patients.
24. Despite adjudication of the matter by successive bodies the tenacious pursuit of the issue by the complainant indicates her unwillingness to accept the situation. The Commissioner is therefore satisfied that the request serves no useful purpose or value as the underlying complaint has already been addressed and settled on numerous occasions.

25. In light of his investigation the Commissioner has concluded that the complainant's request is obsessive. He considers it to be the continuation of an improper use of a formal procedure. It is a further addition to the long line of related requests and arguments that has been submitted by the complainant to the practice over the years and is the cause of substantial distress. The practice is therefore not obliged to comply with the request.

Right of appeal

26. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

**Racheal Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**