

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2014

Public Authority: Health Research Authority

Address: Skipton House
80 London Road, London, SE1 6LH

Decision (including any steps ordered)

1. The complainant has requested information about the Health Research Authority (HRA) Board and HRA administration.
2. The Commissioner's decision is that HRA has correctly applied section 14(1) of the FOIA.
3. The Commissioner does not require the HRA to take any steps as a result of this decision notice.

Request and response

4. On 27 September 2013, the complainant wrote to the HRA and requested information in the following terms:
 - i. *The HRA Board's record and information on its consideration of the current HRA arrangements for dealing with individual complaints.*
 - ii. *The HRA Board's record and information on its consideration of HRA management policies.*
 - iii. *The HRA Board's record and information on its consideration of HRA management systems that aim to safeguard public funds and corporate governance, achieve value for money and effective implementation of good practice.*
 - iv. *The HRA Board's record and information on its consideration of whether the conduct of the HRA ensures proper and widely publicised procedures for raising complaints, concerns about*

maladministration, breaches of Code of Conduct and other ethical concerns.

- v. *The HRA Board's record and information on its consideration of whether the HRA maintains an effective system of policies and reviews and updates these policies on a regular basis.*
 - vi. *The HRA Board's record and information of its consideration that the HRA are controlled or regulated by the HRA Board.*
 - vii. *The HRA Board's record and information on its consideration of regarding voluntary members of research ethics committees the HRA are unregulated by the Parliamentary and Health Service Ombudsman.*
 - viii. *The HRA Board's record and information on its use and consideration of its six key functions.*
5. On 3 October 2013 HRA responded. It refused to provide any information citing section 14 of the FOIA as its basis for doing so.
 6. The complainant requested an internal review on 4 October 2013. Due to its application of section 14, the HRA did not respond.
 7. Following intervention by the Commissioner HRA carried out an internal review and sent this to the complainant on 20 December 2013.
 8. It stated that it considered it had previously provided a satisfactory response to the substance of the request however it had decided to issue a further response.

"In response to all bullet points detailed above, minutes are taken at every Board meeting, which provide a full record of what was discussed. These are freely available on the HRA website at:

<http://www.hra.nhs.uk/about-the-hra/board/meetings/>. All Board meetings are open to the public and Board minutes are published on the website after they have been approved at the subsequent meeting."

Scope of the case

9. The complainant contacted the Commissioner on 27 December 2013 to complain about the way his request for information had been handled. He stated:

"One may notice that [named individual's] bullet points are a printers' device and into which he inserts his conclusion; they do not refer to the

FOI request or represent it; whilst his avoidance of the list numbering does not aid clarity. He claims to respond to 'all bullet points detailed above' whereas he is required to respond to the FOI request.

[Named individual] has been rather inconsistent in his responses; he did not complete his initial reference to section 14 of the FOIA; he did not respond to my request for a review of his decision, acting only on your letter of the 29th Nov; in his review he does not confirm or deny that they hold the requested information and refers to the Board's minutes whilst assuming there is no other requested information held; and given that they hold the requested information he has not met my entitlement to have that information communicated to me."

10. The Commissioner clarified to the complainant that the FOIA is not prescriptive in how a response is formatted and took no issue with the HRA's use of a single bullet point.
11. He further explained that the HRA was not obliged to respond to his request for internal review, however HRA had ultimately provided an internal review.

Reasons for decision

12. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or

¹ GIA/3037/2011

distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

15. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
17. The Commissioner has considered the representations of both parties in reaching his position.

Is the request obsessive?

18. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
19. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long

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[http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_special_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~/media/documents/library/Freedom_of_Information/Detailed_special_guides/dealing-with-vexatious-requests.ashx)

series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.

20. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
21. In this case, the complainant has stated that his request stemmed from the 'Standing Orders of the HRA Board' which had been provided to him on 9 August 2013.
22. The HRA contends that it has been in considerable correspondence with the complainant since 2008 in respect of various requests. It provided a list by way of example of the interactions it had had. This included three FOI requests and two appeals to the First Tier Tribunal following the Commissioner's decisions in those cases.
23. The Commissioner has taken into account the context and background to the request, in conjunction with the volume of correspondence to the HRA and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

Is the request designed to cause disruption or annoyance?

24. The HRA provided background to this case which is contained in a confidential annexe which will not be disclosed to the public.
25. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the request was vexatious in that it was designed to cause disruption and annoyance to the staff at HRA.
26. The HRA further explained to the Commissioner that it estimated it had cost in excess of £100,000 in responding to the complainant, and as a relatively small organisation the burden was significant.

Does it have the effect of harassing the public authority?

27. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it

is justified and proportionate, it is helpful to assess the purpose and value of the request.

28. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
29. In this case, the request is made against a backdrop of other correspondence and although the purpose of the request appears to be serious in its intent, the HRA has stated that its initial response was to deem the request vexatious as *'it is related to seeking information regarding the HRA's various policies, including complaints, which HRA had previously responded to'*.
30. In addition, HRA had written to the complainant on 8 August 2013 and stated:

"The Health Research Authority has decided that it can no longer justify the time and expense in corresponding further regarding your complaints and requests for information. We consider that all matters have been dealt with in numerous letters and documents we have provided to you during the past five years.

We believe the point has now been reached when further work in relation to requests from you will have an adverse effect on the services we offer to researchers and the public who have a legitimate claim on our time. We will not therefore enter into any further correspondence or communication on any matters with you."

31. The HRA did explain however, that this did not prevent the complainant from raising other legitimate matters with the HRA at any time. This response subsequently triggered a further FOI request from the complainant.
32. The Commissioner has considered the purpose of the request in the context of the other correspondence and finds that the effect is to harass and annoy the public authority.

The Commissioner's decision

33. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the HRA was correct to find the request vexatious. He has balanced the purpose and value of the

request against the detrimental effect on the public authority and is satisfied that the request is obsessive and had the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Other matters

34. In correspondence with the Commissioner the complainant raised concerns about the inconsistent nature of the HRA's responses as outlined in paragraph 9 above.
35. The Commissioner explained to the complainant that in this case HRA had refused to answer the request on the grounds that it deemed it to be vexatious. Consequently, it considered that it was unnecessary to carry out an internal review, hence there being no response to the request for internal review.
36. The Commissioner further explained that the FOIA does not prescribe the format a response is obliged to take, and given that the HRA response was a single bullet point the Commissioner takes no issue with the format.
37. He also explained that the internal review gives a public authority an opportunity to revise its position, which HRA did following intervention by the Commissioner, and provided a further response.
38. Whilst the complainant did not consider it addressed all his points and did not provide him with any information other than a link to a website, the Commissioner has also considered if the HRA has complied with section 1 of the FOIA.

Section 1(1)(a)

39. Section 1(1)(a) of the FOIA provides that, upon receipt of an information request, a public authority must respond confirming or denying whether it holds information falling within the scope of the request. This means that a public authority should take steps to identify all relevant information that is held upon receipt of a request.
40. However, given that section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious the Commissioner finds that the HRA has complied with its duties under the act.

Right of appeal

41. 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

42. 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.
43. 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