

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 July 2014

**Public Authority:** West London Medical Centre  
**Address:** 20 Pield Heath Road, Hillingdon,  
Middlesex UB8 3NG

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to a number of matters including reports completed for insurance companies and medical record requests from patients.
2. The Commissioner's decision is that West London Medical Centre (WLMC) has incorrectly applied section 14(1) of the FOIA to the request.
3. The Commissioner requires the public authority to either provide the information requested or issue a fresh refusal notice without reliance on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 16 January 2014, the complainant wrote to WLMC and requested information in the following terms:

*"Please disclose copies of:*

1. *Numerical data regarding how many medical record responses, including reports, were completed for Employers or Insurance*

*Companies regarding WLMC's patients during the period of 4 October 2013 to 20 December 2013 inclusive.*

- 2. Numerical data regarding how many medical record requests from patients were received and fulfilled; within October 2013; within November 2013 and within December 2013, respectively.*
- 3. Please supply the dates only of any FP Appraisals carried out by Dr Shashikanth for NHS NW London during the period of October 4 October 2013 to 20 December 2013 inclusive.*
- 4. Please supply me with the date that Dr Shashikanth ceased being a GP Lead for CPD in Hillingdon or if he maintains he still is then please confirm such.*
- 5. Dr Shashikanth has, at the very least from 30 October 2013, been accepting that a document comprising a medical record was delivered to WLMC on 16 September 2013 and was/is no longer locatable at WLMC. Unquestionably this should have been reported under IG SIRI rules and also recorded in your Significant Event Log. Please therefore supply:*
- 6. The date that this loss was reported under IG SIRI rules.*
- 7. A copy of the entry in your Significant Event Log concerning that loss, including naturally the date of that entry.*
6. WLMC responded on 13 February 2014. It refused to provide the requested information and cited section 14(1) of the FOIA as its basis for doing so.
7. As WLMC is a one man practice, no internal review was possible and therefore the complainant was directed to the Commissioner.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 February 2014 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if WLMC has correctly applied section 14(1) to the request.
10. Further background to this case is contained in a confidential annex, to be provided only to the complainant and WLMC.

## Reasons for decision

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### *Section 14(1) – vexatious requests*

11. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner has recently issued guidance on his approach to deciding when a request can be considered vexatious. This follows the decision of the Upper Tribunal in *Information Commissioner and Devon County Council v Dransfield* which placed emphasis on the importance of adopting a holistic and broad approach to the determination of whether or not a request is vexatious.
12. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield UKUT 440 (AAC), (28 January 2013)* the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
13. 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 requests at [http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx). In short however they include:
  - Abusive or aggressive language
  - Burden on the authority
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance

14. 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.
15. The Commissioner's guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
16. WLMC has provided the Commissioner with information relating to the background of the request, all of which is not appropriate to detail in this decision notice. The complainant is a carer for the patient. The patient was removed from the GP list on 7 November 2014 following a breakdown in the relationship.
17. The patient submitted a Subject Access Request (SAR) under section 7 of the Data Protection Act on 4 October 2013 which requested the release of the records on the same day. This letter also described another letter which had been delivered to the GP, but was not seen by him at the time of consultation on 16 September 2013. The concerns raised in relation to the SARs have been dealt with by the Commissioner separately and do not form part of this decision notice. However, the Commissioner considered it appropriate to make note of this as it appears this FOI complaint has stemmed from the handling of those SARs and is therefore linked to the context and history of the complaint.
18. The request dated 4 October 2013 also asked for the GP's GMC registration number and details of his Medical Degree, which was provided.
19. WLMC considered the request dated 16 January 2014 to be vexatious for the following reasons:

*Abusive or aggressive language*

- WLMC considered that throughout the case the tone or language of the requester's correspondence went beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

WLMC provided copies of emails where the complainant had stated

they had been lied to and queried whether the staff should retain their posts.

#### *Burden on the authority*

- WLMC stated it was given various deadlines by the complainant in their own terms and asked to meet while being threatened to be reported to various regulatory bodies. They therefore considered that it could not reasonably be expected to comply.
- WLMC stated that lots of administration time has been taken up to deal with this couple and it has a limited team to serve 4200 patients. It considered that there appeared to be no obvious intent to obtain information.
- WLMC explained it is a small practice and dealing with this single issue has taken time away from care provided to other patients. Staff have been distressed by the language used and accusations made. The practice as a whole have felt harassed and abused.

#### *Personal Grudges/unfounded accusations*

- WLMC stated that initially the Senior Practice Administrator was targeted with highly personalised attacks and accusations and staff feel the current principal GP is subjected to a hate campaign.
- WLMC stated that any attempt to resolve the issue has been met with more accusations and threats of further reporting to various regulatory bodies.
- The request makes completely unsubstantiated accusations against the public authority or specific employees. The pattern is visible throughout all the communications.

#### *Intransigence*

- WLMC stated that the practice administrators were doing their best to resolve the issue from the very beginning only to be subjected to accusations of various things.

#### *Unreasonable persistence/frequent or overlapping correspondence*

- WLMC stated that the complainant submits frequent correspondence about the same issue or sends in new requests before it has had an opportunity to address their earlier enquiries. This was evidenced in copies of emails as stated above.

- Patients are required to email the practice email address. However, the complainant found the GP's personal email address and was directly emailing him.
- WLMC believe that the intention behind the requesting of further information is to make more and more complaints. The complainants have written to many organisations as evident in mails.
- WLMC considered the complainant is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority.

### **The Commissioner's position**

20. WLMC stated in a response to the complainant that:

*"We get access requests all the time from private organisations, insurance companies and individuals and this work is considered as private work for a fee. However, the request would have to join the queue and they will be done in order of receipt".*

This response consequently generated parts 1 and 2 of this FOIA request.

21. As stated above, the request arose following correspondence from WLMC relating to a number of issues, including a SAR made on 4 October 2013.
22. The decision, that the information request was vexatious, was made on 13 February 2014. Any events that occurred after this are to be disregarded in determining whether that decision was correct. Accordingly the Commissioner cannot find that complaints made to other organisations after that date contribute to the decision that the request for information was vexatious.
23. The Commissioner acknowledges WLMC's position and the time it has taken to try and respond to various correspondence and requests from the complainant.
24. Whilst the complainant's language may be described as accusatory it is not, in the Commissioner's view, of such magnitude or severity to make the request a vexatious one. Public authorities, of course, routinely deal with members of the public. Whether through frustration, or some other reason, the language used by a member of the public may sometimes be "challenging" and less than jovial. The Commissioner considers however that those holding a public position should be accustomed to a certain amount of criticism but accepts that there is obviously a boundary of what is or is not acceptable. However, though the language

of the complainant may not be pleasant, in this case the Commissioner does not consider it has crossed that boundary.

25. Despite WLMC's supporting evidence in terms of the email correspondence provided the Commissioner notes that much of this is in relation to the delay in responding to SARs, trying to ensure that the patient records are accurate, and other matters rather than relating to FOI requests.

26. For example, on 9 October 2013 the complainant writes:

*"We provide Dr Shashikanth with 10 working days to deliver written reply concerning this matter. Within his response we require that Dr Shashikanth;*

- Inform us of the action he has taken regarding your employment given that your clear breach of trust has both cause distress and unquestionably brings West London Medical Centre and Dr Shashikanth himself into disrepute.*
- Provide us with a written apology; and*
- Inform us as to why you repeatedly and clearly knowingly lied. Upon the evidence already available to him that you repeatedly told a falsehood such is provide to the standard required in regulatory hearings or employment tribunals; that being the balance of probabilities"*

27. None of the above relates to FOI matters, and appears to be more related to NHS complaints, and the failure or delay of response to SARs. The Commissioner considers that the burden claimed is to some degree, 'self-inflicted' in that WLMC has not responded to SARs or FOI requests in line with their obligations under the legislation. He acknowledges that small public authorities such as this are bound to have less experience of dealing with this type of scenario however, this does not alleviate the obligation. The Commissioner operates a helpline to provide advice, as well as his website. Therefore he does not accept the argument of 'burden'. He does not consider that the WLMC has specifically provided sufficient evidence that responding to these specific requests would have an unjustified or disproportionate effect. It has not detailed the detrimental impact that complying with the requests would entail. Taking the requests at face value, it does not appear to the Commissioner that compliance would be an onerous task.

28. WLMC also stated that it did not consider there was obvious intent to obtain information. However, the Commissioner considers that, as a full time carer, the complainant is entitled to know that appropriate care is being given, and that NHS policies and procedures are being adhered to.

He therefore does consider that there is a serious purpose behind the complainant's request.

29. Having considered all the circumstances of the case, the Commissioner does not consider that WLMC has provided sufficient grounds to deem the request vexatious. It therefore follows that he finds that WLMC incorrectly applied section 14(1) to the request.
30. The Commissioner requires WLMC to either provide the information requested, or issue a fresh refusal notice without relying on section 14(1).

### **Other Matters**

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31. It is clear that WLMC has not fulfilled its obligations under the DPA or FOIA, and has at times struggled to differentiate between the two pieces of legislation.
32. The Commissioner has provided advice to WLMC with regard to the legislation, and how it should approach responses in future.



## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**