

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2014

Public Authority: East and North Hertfordshire NHS Trust

Address: Lister Hospital
Coreys Mill Lane
Stevenage
Hertfordshire
SG1 4AB

Decision (including any steps ordered)

1. The complainant made 13 requests for information relating to a variety of topics. East and North Hertfordshire NHS Trust (the Trust) refused the requests as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Trust has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Background

2. The complainant is the owner of a fast food outlet that traded under the name 'Thirst Aid Station' for a while near the hospital boundary.

Request and response

3. From 26 April to 13 May 2014 the complainant made 13 FOIA requests to the Trust. They covered a variety of topics and are listed in full in the annex. In summary the topics covered are: SUI (Serious Untoward Incident), removal of the Thirst Aid station, purchase of hand tools,

selling personal details, recording telephone calls, itemized costs of office refurbishment, Costa coffee, location of a noticeboard, patient deaths from dehydration, voluntary ambulance services, top 20 websites viewed by staff, staff absences from musculoskeletal related illness and chlorine in the water.

4. The Trust responded on 15 May 2014, stating that it considered the requests to be vexatious and therefore covered by section 14(1) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 16 June 2014 to complain about the way his requests for information had been handled.
6. The Commissioner has examined the requests and related correspondence from both the complainant and the Trust. The Commissioner has considered the scope of the case to be whether the Trust is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

7. 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.
8. The term "vexatious" is not defined in the FOIA. The Upper Tribunal 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.

¹ GIA/3037/2011

9. 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) any harassment or 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).

10. 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.
11. 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.
12. The Trust identified several indicators before treating the requests as vexatious including *'burdening the authority, personal grudges, unfounded accusations, deliberate intention to cause annoyance, scattergun approach and no obvious intent to obtain information.'*

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

The requests burden the authority

13. In this case, the Trust stated that the 13 FOIA requests followed a previous large number of requests dating from 31 March to 21 April 2014 which had been answered in full on 24 April 2014.
14. The previous 27 questions covered a wide variety of topics including:
 - a meeting
 - dates for a contract
 - money spent on storing ghost files
 - record keeping
 - chlorine
 - the fire brigade riser
 - parking profits, tickets, spaces, business rates
 - wearing theatre scrubs
 - attendance of police cars on a particular day
 - costs to remove yellow bag waste
 - counter fraud
 - staff applications
 - palliative care
 - patient age
 - The Scanning Centre
 - Coroner Rules
 - assaults
 - Building costs, office costs
15. On 24 April 2014 the Trust provided a full response to all of the 27 questions *'in an open and transparent way.'* The Trust went on to state *'Our staff have responded to your questions although this has taken some of them away from their frontline duties.'*

16. The Commissioner notes that the complainant was made aware of the impact that his multiple requests had on the Trust on 24 April 2014. However, the complainant went on to make a further 13 wide ranging requests in a period of 17 days (from 26 April to 13 May 2014) which are the subject of this decision notice.
17. The Commissioner has taken into account the context and background to the request and considers that the complainant's persistence has reached the stage where it could reasonably be described as a burden on the public authority.

The requests are designed to cause disruption and have the effect of harassing the public authority

18. 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.
19. 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.
20. The Trust stated that it considers the complainant to be submitting requests to cause disruption to the Trust, rather than have a genuine need for the information to be disclosed in the public domain. It considered that *'the purpose behind the requests does not justify the level of disruption, time and resources required to provide the information sought'*.
21. The Trust provided the Commissioner with the wider context and history of the requests. During March 2014 the complainant traded outside the Lister Hospital A&E department in the Thirst Aid Station. *'The story was reported in the local media as: 'The owner of a burger van trading directly outside a hospital says he has been told to close down, simply because the hospital Trust's chief executive does not want him there'. The local council investigated and established that the requestor did not have the appropriate licence to enable him to operate his business from that location and served him with an eviction notice'*.

22. The Trust states that *'it is our view that the requestor is using the Freedom of Information Act to pursue a personal matter which is of little benefit to the wider public. The recent requests, 14.218, 14.222, 14.223, 14.224, 14.225, 14.226, 14.230, 14.231, 14.232, 14.233, 14.234, 14.238 and 14.247 demonstrate a random or scattergun approach with no serious intent to obtain information and/or are an attempt by the requestor to vent his anger at the decision made by the Council to remove his burger van from the vicinity of the hospital and/or target the Chief Executive.'*
23. The Commissioner notes that the request for the catalogue of all Serious Untoward Incidents is not for a number of calendar years but for the period that the Chief Executive has been at Lister Hospital.
24. The Commissioner has considered the overall number of requests (40) and all the correspondence presented to him and found that there is sufficient evidence to suggest that the 13 later requests were vexatious in that they were in pursuit of a personal matter and are without merit or value to the public. The Commissioner finds that the requests cause a disproportionate level of disruption to the public authority.

The Commissioner's decision

25. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the Trust was correct to find the requests vexatious. He has balanced the purpose and value of the requests against the detrimental effect on the public authority and is satisfied that the requests have the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

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: <http://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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Request 14.218 - request made 26/04/14

https://www.whatdotheyknow.com/request/sui_8#incoming-528417

Please provide a catalogue of all SUIs, including their date and type. We are only interested in the period that (Chief Executive name redacted) has been at Lister Hospital.

If it will help, I would like to clarify this request further. There is clear precedent for the release of this information, as shown by the disclosure log of East Midlands Strategic Health Authority. There are also indications of journalists obtaining several SUI catalogues as well as the actual SUI notices themselves.

In terms of the dates of the incidents, there are no grounds to exempt these under the Data Protection Act. The "abortion statistics case" (EA/2008/0074) gave grounds for the release of data that is anonymised, arguing that any identification of individuals is so unlikely that it cannot prejudice disclosure. This approach is outlined in the Information Commissioner's Office Line to Take 114.

If you apply any exemptions I would please like a detailed explanation of why and where they have been enacted. In the case of redaction, I would ask that they are sufficiently granular in nature and follow ICO guidelines outlining best practice. If redactions are made it ought to be clear which exemption(s) are being relied upon. The best way of doing this might be to include another column in the index, see for instance §53 of EA/2011/0036.

I would like to add that if redaction occurs it may not contribute to FOI cost capping, as ruled by the ICO LTT115 and upheld in the case of The Chief Constable of South Yorkshire v ICO (EA/2009/0029).

In the spirit of the FOIA and in order to lighten to workloads of information officers, I forgo my right to a postal response - an email shall be sufficient. If you have any questions regarding this request, or believe that it is not properly formulated and would like to talk with me to refine the request, please do not hesitate to contact me on (Telephone number redacted).

I would like to add that at some point in the future I would be interested in requesting copies of SUI notifications themselves. There are grounds for doing this - it has been achieved in a story linked to above. As SUI notifications are anonymised according to best practice there should be no problem under S40 of FOIA (protection of personal data). However, in some cases I will acknowledge that an S30 (ongoing investigations and proceedings) may prejudice against disclosure. Under S16 (duty to assist), would it be possible for us to discuss such requests at some point in the near future?

Request 14.222 - request made 03/05/14

https://www.whatdotheyknow.com/request/mr_nic_carver#incoming-528418

Further to (name redacted) calling (name redacted) re Thirst Aid Station and its removal and closure of business, we are trying to find out

1 exactly what was said

2 why (name redacted) called (name redacted) instead of using normal complaint procedures

3 why (name redacted) could not see us to date, from 6 march 2014

4 why (name redacted) acted privately and not on behave of the NHS Trust

5 why (name redacted) used The Trusts assets to pursue a private matter

Request 14.223 - request made 03/05/14

https://www.whatdotheyknow.com/request/purchase_of_hand_tools#incoming-528419

Please advise what the Trusts policy and procedure is for say the purchase of a new hammer by tge maintenance dept.

Request 14.224 - request made 03/05/14

https://www.whatdotheyknow.com/request/selling_personal_details#incoming-528420

We understand that a female staff member in the payroll section reguarly sells staff and patient information to a firm of debt collectors, is this in keeping with the trusts data protection duties!

Request 14.225 - request made 03/05/14

https://www.whatdotheyknow.com/request/recorded_telephone_calls#incoming-528421

Please confirm that all calls made in and out of Lister Hospital Stevenage are recorded and stored.

Request 14.226 - request made 03/05/14

https://www.whatdotheyknow.com/request/itemized_costs_for_executive_of_f#incoming-528422

Please provide itemized cost breakdown for the refurbishment of the mental health ward to executive offices, including cost of fitout with desks, chairs etc

Request 14.230 - request made 06/05/14

<https://www.whatdotheyknow.com/request/costa#incoming-528423>

Can you confirm that Costa Coffee are now selling their products at Lister hospital

Request 14.231 - request made 06/05/14

https://www.whatdotheyknow.com/request/display_board#incoming-528425

Please advise where the public transport display Y board is located at the hospital

Request 14.232 - request made 06/05/14

https://www.whatdotheyknow.com/request/deaths_2#incoming-528427

Since 01 Jan 2009 to date please advise how many patients have died at Lister Hospital where dehydration has been a factor.

Request 14.233 - request made 06/05/14

https://www.whatdotheyknow.com/request/ambulances_3#incoming-528428

Could you please provide me a breakdown for the last three years, of usage of private or voluntary ambulance services, broken down as follows:

(1) the spend on buying in support for front line duties from:

(a) private ambulance services

(b) voluntary ambulance services (i.e. St John, British Red Cross)

(2) the number of jobs attended by:

(a) private ambulance services

(b) voluntary ambulance services

If you have monthly figures for both of the above, that would be ideal, but I will accept annual only figures if monthly are not held

Request 14.234 - request made 06/05/14

https://www.whatdotheyknow.com/request/web_views#incoming-528429

I would like to see a list of the top 20 websites viewed by Employees and Directors

For example, which website has received the most views by officers during working hours, using the Trusts computer system. Which website has received the second highest number of views, and the third etc, up to the 20th most popular website for Trust staff to view.

Please can you provide this information based on the 12 month period from November 2012 to November 2013.

I would like to know how many views each website has received in total from officers.

Request 14.238 - request made 07/05/14

https://www.whatdotheyknow.com/request/musculoskeletal_absence#incoming-528430

1) How many staff absences in 2012-2013 were as a result of a musculoskeletal related illness/problems (where recorded).

Please provide this information as a raw number (if possible under data protection rules) and as the number of full-time working days lost (including non-working days).

2) The relative cost to the Trust (in £'s) of these musculoskeletal absences for the specified year (2012/13)

And,

3) The current policy, the processes in place and the occupational health provisions for those off sick, or suffering from, a musculoskeletal related complaint.

Request 14.247 - request made 13/05/14

https://www.whatdotheyknow.com/request/chlorine_in_water_not_needed#incoming-528431

<http://www.mercola.com/Downloads/bonus/chlorine/default.aspx>

With reference to the above, and following a FOI request to Anglian Water, there is no reason to chlorinate town water supply, please advise why you are doing this, your previous answer is noted and not to be repeated.

Please supply water test results also for the period 01 Jan 2009 to 31 March 2014.