

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2015

Public Authority: Medicines and Healthcare Products Regulatory Agency

Address: 151 Buckingham Palace Road
Victoria, London SW1W 9SZ

Decision (including any steps ordered)

1. The complainant has requested information about the record management policies of the Medicines and Healthcare Products Regulatory Agency (MHRA). The MHRA refused to comply with the three related requests as it considered them to be vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that the requests are vexatious and that the MHRA does not need to take any further steps.

Background

3. The complainant has submitted a separate information request to MHRA that concerns a long running dispute about urine sample collection devices: FS50551392. This request is the subject of a separate decision notice.
4. The complainant submitted request FS50551392 in March 2014. It concerned a complaint that was made to the MHRA in 2009; the complaint case was closed in 2009. The MHRA originally told the complainant that the related paper file would have been destroyed after three years and that, consequently, it no longer held the file. The MHRA used information that it held on its computer systems to respond to the information request.
5. As part of its internal review into its response to request FS50551392, the MHRA located the 2009 complaint file in its off-site storage facility. The MHRA apologised to the complainant, explained how this mistake

had happened and detailed the steps it had taken to reduce the risk of this happening again.

Requests and response

6. On 16 April 2014, the complainant wrote to the MHRA and requested information in the following terms (MHRA ref 14/164):

- 1. What was the name of the policy that if there was no prosecution the paper file would be destroyed*
- 2. When ie what date was this policy instigated and by whom and if no name is provided give reason*
- 3. What was the seniority level of the person who instigated this policy of destruction of paper files after 3 years*
- 4. What occurred prior to the instigation of this policy of destruction of paper files after 3 years*
- 5. What is the policy where a prosecution case is raised - how long are the files kept in that instance.*
- 6. What is the current policy of the MHRA on destruction of paper files of investigation and if it was different to the above when was it changed.*
- 7. Is it not the case that by law all documents must be kept for a minimum of 7 years*
- 8. Why was the documentation not transferred to electronic storage*
- 9. How are the files destroyed?*

7. On 19 April, the complainant requested additional, related information (MHRA ref 14/171):

- 11. What date was the file relating to the RBS matter destroyed*
- 12. Who ordered the destruction of the RBS file - please send a copy of all and any correspondence in this regard. If none was sent why was the file destroyed.*
- 13. HOw was the RBS file destroyed and what remains - is it just the cover or nothing at all -*
- 14. How are files stored before they are destroyed - in what facilities*
- 15. HOw are files stored once they have been destroyed*

8. In its submission, the MHRA asked the Commissioner to also consider a further request that the complainant made on 30 April (MHRA ref 14/186), which is substantially similar to the two requests above:

Can you provide me with

- a) The current records management system of the MHRA*
- b) All the previous record management systems since 2000*

c) A history of changes including the signing off author of them of the records management system

Can you also provide the policy document that permits in reply to FOI requests, complaints, the MHRA signs off itself as customer services and refuses to identify who is dealing with the FOI and or complaints especially given the stated objective of the Govt and the MHRA of accountability and transparency..”

9. The MHRA responded to the complainant on 14 May. It said that it would not comply with these requests as it considered them to be vexatious under section 14 of the FOIA. It provided comprehensive arguments to justify its position.
10. Following an internal review of its response to the three requests, the MHRA wrote to the complainant on 16 June. It maintained its original position.

Scope of the case

11. The complainant contacted the Commissioner on 4 August to complain about the way his requests for information had been handled. Dissatisfied with its application of section 14, the complainant also considered that the MHRA's initial claim that it had destroyed an investigation file had breached section 77 (altering records to prevent disclosure).
12. Having considered the explanation the MHRA provided to the complainant in the course of its internal review of FS50551392, regarding its location of relevant files in offsite storage, the Commissioner is prepared to accept this as an accurate version of events – on the balance of probabilities - and he did not investigate this element further.
13. The Commissioner has focussed his investigation on whether the related requests made on 16, 19 and 30 April, that are the subject of this decision notice, can be considered vexatious and whether the MHRA is correct not to comply with them.

Reasons for decision

14. Section 14 of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.

15. The Commissioner's guidance, published in November 2014, refers to an Upper Tribunal decision that establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
16. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request.
17. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that these are particularly significant in this case.

Background and history of the requests

18. The MHRA has told the Commissioner that, taken in isolation, these requests would probably not be considered vexatious. However, the requests form part of a long standing dispute between the complainant and the MHRA. The dispute concerns various classification and enforcement matters to do with products the complainant has designed, and those of other manufacturers.
19. The dispute goes back to 2009 and, to date, the complainant has submitted over 50 FOIA requests to the MHRA, in addition to a large volume of other complaints and correspondence.
20. The Complainant has, on occasion, used abusive or aggressive language and terminology about MHRA staff in his long correspondence with the MHRA, for example references to Nazism, anti-Semitism and comparing individuals with people involved in the 'Baby P' case. The complainant has also made other unsubstantiated accusations of criminality and corruption against MHRA staff.
21. The Commissioner has reviewed the background to this case that the MHRA has provided, which includes evidence of the complainant's past behaviours. It is apparent that the complainant also has a tendency to submit a new information request on receipt of the MHRA's answer to a previous request, so that the requests become distant from the complainant's original concerns; what has been termed 'vexatiousness by drift' in *Wise v Information Commissioner (GIA/1871/2011; EA2010/0166)*. The requests that are the subject of this notice appear to be examples of this.

22. The MHRA has also drawn the Commissioner's attention to appeal [EA/2011/0238](#)¹, which was brought in response to the Commissioner's decision in a separate case (FS50364598). The Tribunal observed:

"... it is well-established law and plain good sense that a request must be judged by reference to any previous history of relations between requester and public authority..."

23. The Commissioner has therefore considered the wider factors behind the requests that are the subject of this notice, and noted the Tribunal's comments in EA/2011/0238. He has concluded that the requests do not have a serious purpose and agrees with the MHRA that they appear to be a continuation of the complainant's long standing dispute with the MHRA regarding its investigation into a urine sample collection device.

Impact on authority versus purpose and value of the requests: are the requests likely to cause disproportionate or unjustified level of disruption, irritation or distress?

24. The MHRA has told the Commissioner that, taken in isolation, responding to these requests would be unlikely to cause the MHRA a significant level of disruption. However, as part of a long standing campaign, the Commissioner considers that dealing with these requests would have the cumulative effect of causing MHRA a disproportionate level of distraction. And any distraction would be unjustified given his conclusion at paragraph 23 that the requests do not have a serious purpose.

Are the requests proportionate and justified?

25. The MHRA told the complainant that it had destroyed a paper file that fell within the scope of their information request FS50551392, only to subsequently find it in its offsite storage facility. The Commissioner accepts that this mistake could lead to mistrust in how the MHRA manages its records and a desire to be reassured. However, he has had sight of the MHRA's full explanation for this mistake, which it provided to the complainant in its internal review of FS50551392. And the Commissioner notes the recommendations for improving its records management practices that MHRA identified as a result.

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i737/20120601%20Website%20Decision%20EA20110238.pdf>

The MHRA also went on to disclose additional information to the complainant following its internal review of FS50551392.

26. The Commissioner considers that the MHRA has adequately addressed the shortcoming in its response to the complainant's request FS50551392, and that the complainant's requests which are the subject of this notice are unjustified and disproportionate.
27. Given the background to the requests, the disproportionate level of distraction they would impose and the fact that they do not appear to have a serious purpose, the Commissioner is satisfied that the requests are vexatious and that, under section 14 of the FOIA, the MHRA is correct not to comply with them.

Right of appeal

28. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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

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