

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2015

Public Authority: Stafford and Stoke on Trent Partnership
NHS Trust

Address: Morston House
The Midway
Newcastle-Under-Lyme
ST5 1QG

Decision (including any steps ordered)

1. The complainant has requested a report about the adult social care file of a relative. The Stafford and Stoke on Trent Partnership NHS Trust ('the Trust') has refused to comply with the request which it says is vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that, on this occasion, the request is not vexatious and the Trust is not correct to apply section 14 to it.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - The Commissioner requires the Trust to respond to the request by either releasing the information, or by relying on an exemption other than section 14.
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

5. On 15 June, the complainant wrote to the Trust and requested information in the following terms:

"I wish for the Stoke on Trent Partnership Trust to accept this email as A formal request for the following information.

I require under the FOI and as a Subject Access Request the following Written Information.

The written report requested by Mr Stuart Poynor CEO to Mr Andrew Errington.

The report is Mr Errington's findings regarding the Adult Social Care file of the late [Named Individual and complainant's relative] for whom I also act.

This report was carried out within 2014 and was previously offered to be provided by Mr Poynor CEO.

To date all reasonable requests for this document have been ignored.

The document contains evidence of the failure to provide Social Care and Inappropriate conduct by employed staff from the Trust and potential fraudulent record creation.

I require a substantive reply with the next 14 days or within the guidelines set down by the ICO."

6. The Trust responded on 17 July. At this point, it said that it was not obliged to disclose the information to the complainant under the Data Protection Act as it does not form part of his relative's medical records. It said that, under the FOIA, the information is exempt from disclosure under section 40(2) as it is the personal data of a third person.
7. The Trust did not offer an internal review but directed the complainant to submit a complaint to the Commissioner if he was not satisfied with its response.
8. During the Commissioner's subsequent investigation, the Trust revised its position. It said that the request is vexatious and refused to comply with it. The Trust informed the complainant of its new position on 17 September.

Scope of the case

9. The complainant had initially contacted the Commissioner on 17 July to complain about the way his request for information had been handled.

10. The Commissioner has focussed his investigation on the Trust's subsequent application of section 14 to the complainant's request.

Reasons for decision

Background

11. The Trust considers that the background and history to the request is relevant in this case. In 2012, a thirteen part, social care and health complaint against Staffordshire County Council ('the Council') that the complainant had submitted was investigated. The complainant was not satisfied with the way the Council had treated him during two Vulnerable Adult Investigations and its removal of his appointeeship in respect of a relative. At this stage, two parts of the complaint were upheld and it was not possible to make a full finding with regard to one part. The remaining ten parts of the complaint were not upheld.
12. The Trust says it reviewed the complainant's resulting concerns about the investigation, effectively re-opening the complaint. The Commissioner understands that it is this review, carried out by the Trust's Head of Social Work and dated November 2013, that is the subject of the complainant's current request. The findings and outcome of the review were addressed in letters to the complainant from the Trust's Chief Executive – Mr Poynor – and the Trust's Chairman, in December 2013. The complainant's service complaint was also subject to an internal audit, which resulted in an audit report dated October 2013. The Trust says that the terms and findings of the audit report were provided to the complainant, with redactions, under confidential cover. The Trust says that the complainant did not observe the confidentiality as he subsequently posted the redacted report on his website.
13. The matter was referred to the Local Government Ombudsman. The Trust says that it worked with the Ombudsman to resolve the complainant's service complaint. The Trust says that it and the Council fully addressed and implemented the Ombudsman's findings.

Section 14(1) – vexatious requests

14. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information under the FOIA, if that request is vexatious.
15. The term "vexatious" is not defined in the FOIA. 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. In short 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
16. 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's guidance suggests that, if a request is not patently vexatious, 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. In doing this 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.
 18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
 19. The Trust's position is that the complainant's original complaint against the Council has been independently investigated. It therefore considers that the request is futile because it will not result in any further investigation or action. The Trust also considers the request is vexatious because, due to the personal, sensitive and confidential nature of much of the report, it would have to heavily redact the material before it could release it. In the Trust's opinion, this would leave a document that is, arguably, useless.
 20. The Trust acknowledges that, in isolation, providing the report would not have a detrimental effect on the Trust. However, it says that the cumulative effect of the complainant's correspondence does have a significantly detrimental effect on the Trust. This is because it considers that it has reached the stage where it has fully addressed all the matters that the complainant has raised with regard to his wider service complaint.
 21. The Trust has gone on to provide evidence in support of some of the

criteria for vexatiousness identified at paragraph 15.

22. **Abusive or aggressive language:** The Trust says it has concerns about the tone, language and statements that the complainant has made on his blog and via 'Twitter'. It wrote to the complainant in July to express its concerns about the complainant's published comments about one particular staff member. The Commissioner has seen this letter. The Trust is concerned that should information be provided to the complainant, other staff members may be targeted.
23. **Unreasonable persistence:** The Trust says that the complainant is attempting to re-open an issue that has been comprehensively addressed: by the Trust's initial response to his complaint, its review of that response and the subsequent internal audit that the Trust requested. The Local Government Ombudsman was also called on to consider the matter.
24. **Unfounded accusations:** The Trust has told the Commissioner that, within the context of his request, the complainant has repeated unsubstantiated accusations against the Trust and named employees. It has told the complainant that his continued harassment of its staff through his blog and Twitter account is without foundation and is distressing. In its July letter the Trust advised the complainant that if he continued making similar comments about its staff then it would resort to legal proceedings. The Trust had also offered the complainant the opportunity of meeting the staff concerned. A meeting did not go ahead because, following the comments he had posted on his blog and on Twitter, staff did not feel able to meet the complainant.
25. The Commissioner has considered the Trust's arguments. He acknowledges its concerns about the accusations and comments about the Trust that the complainant has published on his blog. However, he notes that the complainant's current request for information is not written in a hostile tone. Furthermore, from the evidence provide to him, the Commissioner does not consider that the complainant's correspondence about his wider complaint has reached an unreasonable level of persistence at this stage.
26. The Commissioner has seen the review document that is the subject of the complainant's request. He notes that it is 19 pages long. The Trust says that it would have to redact particular information from the review if it were to release the remainder of the document and that this would render the document useless. First, the Commissioner considers that, given that the document is not of a significant length, the process of redacting information contained in it would not be particularly onerous. Second, the fact that the review may not make sense were it to be

redacted would not be a valid reason for withholding the entire document.

27. The Commissioner acknowledges that the Trust considers that its investigation of the complainant's service complaint is now complete, that the matter is now some two years old and that dealing with the complainant's ongoing correspondence about it is likely to be somewhat frustrating for the Trust.
28. However, the complainant had a service complaint concerning the Council and the Trust, elements of which were upheld on initial investigation. Moreover, more than one additional element of the complaint that was originally not upheld was, during further investigation, found to be valid. The Commissioner considers that in this situation, where the Trust's position has shifted during its investigations, the complainant's request is reasonable. The requested information may enable the complainant to better understand the Trust's handling of his service complaint and to be reassured that it has addressed his concerns appropriately. Furthermore, the information in question is not particularly lengthy and, in the Commissioner's opinion, redacting any information from it is unlikely to take too much time.
29. Having carefully considered all the circumstances of this case, the Commissioner is not persuaded that this particular request can be categorised as vexatious. He therefore considers that the provision under section 14(1) cannot be applied to it.

Right of appeal

30. 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

31. 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.
32. 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
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