

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2017

Public Authority: Herts Valleys Clinical Commissioning Group

Address: Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU

Decision (including any steps ordered)

1. In three requests, the complainant has requested information about retrospective claims to the NHS Continuing Healthcare scheme. Herts Valleys Clinical Commissioning Group ('the CCG') has refused to comply with the requests which it says are vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the requests are vexatious and the CCG is correct not to comply with them.
3. The Commissioner does not require the CCG to take any steps.

Request and response

Request 1

4. On 27 October 2016, the complainant wrote to the CCG and requested information in the following terms (CCG reference 16171017 – given as '16171117' in CCG's spreadsheet):

"I have read on many websites covering Retro Review of CHC that even claims that are successful are not being paid the full carehome costs but a percentage of the time spent in those carehomes. If this is true please state exactly where this is in the NHS guidelines/instructions you are

using for this review and when this information was passed on to claimants."

Request 2

5. On 28 October 2016, the complainant wrote to the CCG and requested information in the following terms (CCG reference 16171022):

*"1. How many claims for Retrospective Review of CHC were successful.
2. How much in total was paid out to those claim. Please answer these questions asap, I have asked the same questions to other CCG's and got an answer without hesitation, what is different about you?"*

Request 3

6. On 4 November 2016, the complainant requested information of the following description (CCG reference 16171107):

"How many successful claims were submitted by a solicitor on behalf of a claimant.

How many successful claims have been paid the full amount claimed for?

What criteria was used to give successful claimants less money than they claimed for. Exact NHs guideline reference please or whatever passes as a guide in HVCCG's eyes.

What was the reason to go for a "different" Comm. Group rather than do it "inhouse" with regard to reviewing claims"

7. The CCG issued a refusal notice on 24 November 2016, which references the three reference numbers above. In the notice, the CCG categorised the complainant's requests for information about retrospective reviews of Continuing Healthcare as vexatious under section 14(1) of the FOIA. It confirmed that it would not offer the right to an internal review in this instance.

Scope of the case

8. The complainant contacted the Commissioner on 28 November 2016 to complain about the way his requests for information had been handled.
9. The Commissioner notes that, in its submission to her, the CCG has said that it considers request 1 (reference 16171017) to be a communication relating to the complainant's appeal regarding his claim for retrospective healthcare costs, rather than a request under the FOIA. However,

because the CCG nonetheless appears to have referred to this request in its refusal notice, the Commissioner has included it in her investigation.

10. Two other queries originally appeared to be within the scope of the Commissioner's investigation. The first was a request submitted on 5 October 2016 (CCG reference 16171025). The CCG has confirmed to the Commissioner that it responded to this request, with its response being that it does not hold the information requested.
11. The second query was submitted on 8 November 2016. The CCG has told the Commissioner that this was a question the complainant asked as part of correspondence between its FOI Officer and the complainant, after the complainant informed the CCG that he intended to escalate his complaint about its responses to his FOIA requests to the Commissioner. The CCG did not consider this to be an FOIA request and it was therefore not included in the refusal notice of 24 November 2016.
12. The Commissioner's investigation has focussed on whether the CCG is correct to categorise the three requests at paragraphs 4, 5 and 6 as vexatious under section 14(1) of the FOIA.

Reasons for decision

Background

13. 'Continuing Healthcare' is an NHS scheme which came into force in 2007 and which funds some people's NHS care, including care home fees. In 2012 the Department of Health announced a deadline of 30 September 2012 for individuals to request a retrospective assessment of eligibility for Continuing Healthcare funding, for cases during the period 1 April 2004 to 31 March 2011. The administration of payments under the Continuing Healthcare scheme transferred to Clinical Commissioning Groups in 2013.
14. The Commissioner's understanding is that the complainant submitted a retrospective Continuing Healthcare claim to the CCG. This was rejected and, at the time of the requests, the complainant was intending to appeal the CCG's decision.

Section 14(1) – vexatious requests

15. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious.
16. The term 'vexatious' is not defined in the FOIA. The Upper-Tier Tribunal considered the issue of vexatious requests in the case of the Information

Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”.

17. The Dransfield case identified four factors that may be present in vexatious requests:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request.
18. The Commissioner has identified a number of ‘indicators’ which may also be useful in identifying vexatious requests. These are set out in her 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; and
 - deliberate intention to cause annoyance.
19. 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.
20. 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 on it and balance this against the purpose and value of the request.
21. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be ‘vexatious’ depending on the circumstances of that request.
22. The CCG has provided the Commissioner with a spreadsheet that details its correspondence with the complainant. Between May 2016 and March 2017, the CCG says it received 52 communications from the

complainant relating to his retrospective claim for healthcare costs under the Continuing Healthcare scheme.

23. The CCG says that this correspondence is in addition to correspondence between the complainant and Arden & GEM Commissioning Support Unit which was managing the complainant's claim and appeal, on behalf of the CCG.
24. The spreadsheet that the CCG has provided includes not only the correspondence received, but also a commentary that explains what actions were taken as a result of the questions the complainant asked. It also includes the point at which the CCG started to consider whether or not the volume and nature of the requests that the complainant was sending to the CCG might engage section 12 (cost exceeds appropriate limit) or section 14(1) of the FOIA.
25. The complainant's communications were addressed variously to the CCG's FOI Officer, its Complaints Manager, the CCG Enquiries team, the Continuing Healthcare team, NHS England, Arden & GEM Commissioning Support Unit and several individual staff members.
26. The CCG says the complainant's pattern of communication was to submit additional requests before it had a chance to respond to his existing, open requests, and to submit similar or identical questions to more than one member of the CCG, which resulted in confusion and duplicated effort.
27. The CCG started to consider whether or not the complainant's collection of requests regarding the retrospective review process was vexatious in July 2016. At the time it concluded that, whilst the requests were burdensome and the language was rather accusatory, the complainant may have had a valid interest and reason in obtaining the information. This was because he had stated that he was preparing to appeal the CCG's decision regarding his retrospective claim for healthcare costs.
28. The CCG says it provided the complainant with a large amount of information, signposted him to published information that may have helped him to understand the background to the claim process, and provided a copy of its *'Retrospective Review'* guidance document.
29. In September 2016, the CCG had carried out an internal review of its response to earlier requests the complainant had submitted. As a result of the review, the CCG corrected its answer to one of the requests (although the complainant had not queried it). The complainant then contacted the Enquiries team and asked for the name of the manager of the staff member who conducted the internal review. The CCG has

noted that the complainant has framed a number of his requests as unfounded allegations against the CCG and individual staff members.

30. According to the CCG, the complainant has demonstrated, by repeating his questions and failing to access links to further information that the CCG provided to him, that he did not make use of the majority of the information that the CCG released. The CCG says that the complainant also made comments on a public forum that demonstrate that he was aware that he was requesting information from the CCG that he already possessed. The Commissioner has noted the comment in question, which is included in the CCG's spreadsheet:

"I am now using the tactic of asking my mother's CCG a question about Retrospective Review of Continuing Health Care that I know the answer to because I have found the answer amongst the wilderness of NHS documents and seeing how long it takes to get an answer, let alone the right answer from the CCG"

31. The CCG says that this meant that it was carrying out a significant amount of work with little or no benefit to the complainant. It argues that submitting numerous and overlapping requests for information that the complainant has not read, has chosen to ignore, or already possesses is an inappropriate use of the FOIA.
32. The volume of communications from the complainant and the significant amount of information requested has, the CCG says, created a burden on it that has impacted on its ability to respond to FOI requests from other applicants in a timely manner. The impact has been such that it was necessary to highlight within an FOI report to the CCG Board that the CCG had experienced a disproportionately high number of requests but that the volume of requests did not indicate an area of significant public interest but rather, a high volume of similar requests submitted by a single individual. As an example, the CCG has told the Commissioner that whilst it receives an average of 25-30 FOI requests per month, 13 separate requests were submitted by the complainant alone during September 2016.
33. In September 2016, the Continuing Healthcare team and Arden & GEM Commissioning Support Unit informed the CCG's FOI Officer that responding to the complainant's requests was impacting on their ability to support other claimants. In the case of the Continuing Healthcare team, this included patients with immediate need for assessment for eligibility for payment of healthcare costs.
34. At that time, the complainant's own claim for retrospective healthcare costs and his appeal were already being processed by Arden & GEM Commissioning Support Unit. The CCG therefore considered that the

continuing requests for information outside of the claims/appeals process were inappropriate. They also caused distress to the teams affected, who were concerned that patient care was being affected by the need to keep responding to the complainant's FOI requests.

35. The CCG says it has advised the complainant that it would be more appropriate for him to raise his concerns about his claim through the complaints and appeals processes, rather than through the FOI Officer. The CCG has confirmed that, at the point it prepared its submission to the Commissioner, the complainant had declined an invitation to meet with Arden & GEM Commissioning Support Unit to discuss his appeal. The complainant has instead asked for his complaint to be re-opened for what the CCG says is the third time.
36. In conclusion, the CCG argues that the administrative burden that the volume of requests has caused has been significant. It considers that the impact on its Continuing Healthcare team's ability to support patients requiring assessment for eligibility to receive funded healthcare is particularly concerning. The CCG considers it has had no option other than to apply section 14(1) to requests from the complainant relating to the retrospective claim/review process.
37. The Commissioner understands that if an individual is found not to be eligible for NHS Continuing Healthcare, they will be advised of the appeals process. In the case of the complainant in this case, it appears his retrospective claim for Continuing Healthcare was found to be ineligible. The CCG appears to have advised him of the appeals process and, at or around the time of the requests, the complainant was going through the appeal process, which Arden & GEM Commissioning Support Unit was managing.
38. The Commissioner agrees that, initially, the complainant's queries and requests may have been valid as the complainant sought to understand the reasoning behind his retrospective claim for Continuing Healthcare being found to be ineligible, to support his appeal. The CCG had addressed these queries and the Commissioner notes that the CCG had provided the complainant with its relevant guidance and signposted him to where other relevant, more general, information is published.
39. As above, there is also a process in place – the appeal process – for individuals whose claim for retrospective Continuing Healthcare has been found to be ineligible. An appeal would appear to be an opportunity for an applicant to dispute the claim decision, raise concerns and introduce additional information to support his or her original claim. The complainant was going through this process at the time of the request. The CCG had also invited the complainant to meet with Arden

& GEM Commissioning Support Unit to discuss his appeal; an invitation that the complainant declined.

40. It appears to the Commissioner that the CCG had provided the complainant with appropriate advice and information in response to his previous queries. The Commissioner notes that between 27 May 2016 and 27 October 2016, the complainant submitted more than 50 individual queries and requests about the Continuing Healthcare scheme. By the time of the current requests, the complainant's focus appears to have drifted from the complainant's specific claim to Arden & GEM Commissioning Support Unit handling of these types of claims more broadly.
41. The Commissioner has considered all the circumstances of this case. This has also included the complainant's publicly published comment at paragraph 30; the fact that the complainant had submitted overlapping requests for, sometimes, similar information and that particular teams' ability to focus on patient care was reduced as a result of having to deal with the complainant's continual requests. As a result of her considerations, the Commissioner is prepared to accept that the requests that are the subject of this notice can be considered to be vexatious under section 14(1).
42. She considers that responding to the complainant's frequent requests since May 2016 had become a burden; that responding to the current requests would be a continuance of that burden and that the burden would be disproportionate to the requests' value. In addition to the reasons above, this is because dissatisfaction with the CCG's decision about the complainant's claim can be raised through the claim appeal process and the complainant had submitted such an appeal. More general information about the Continuing Healthcare claim and appeal processes is also already in the public domain.

Right of appeal

43. 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

44. 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.
45. 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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