

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2017

Public Authority: Wigan Borough Clinical Commissioning Group
Address: Wigan Life Centre
College Avenue
Wigan WN1 1NJ

Decision (including any steps ordered)

1. In two requests the complainant has requested information from Wigan Borough Clinical Commissioning Group ('the CCG') about particular personal data held and shared, and about an allegation of racial abuse at a specific GP surgery. 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 as follows:
 - The two requests are vexatious and the CCG is not obliged to comply with them under section 14(1) of the FOIA.
 - The CCG provided adequate advice and assistance and complied with its obligation under section 16(1).
 - The CCG's refusal of request 2 breached section 17(5).
3. The Commissioner does not require the public authority to take any steps.

Requests and response

Request 1 – FS50659774

4. On 2 August 2016 the complainant made the following request for information under the FOIA:

"1). What recorded information do you hold which states what personal data processed from the 01st April 2009 by Ashton, Leigh and Wigan Primary Care Trust (ALWPCT) during their handling of service user's complaints do you hold.

2). What recorded information do you hold which states what personal data processed from the 01st April 2009 by ALWPCT during their handling of service user's complaints have you shared with other organisations since April 2013."

5. The CCG responded on 4 August 2016. It said it had addressed this matter when the complainant had submitted a previous request. In its response to this previous request it had told the complainant that it does not hold information prior to its inception in April 2013 and that NHS England holds all legacy information. The CCG provided the complainant with a link to NHS England's FOI page on its website.
6. In its response of 4 August 2016, the CCG explained what 'legacy information' means. It categorised the current request as vexatious under section 14(1) of the FOIA and advised the complainant to contact NHS England in order to obtain information about Ashton, Leigh and Wigan Primary Care Trust.
7. The complainant requested an internal review on 7 August 2016. On 15 August 2016 the CCG informed him that it would not carry out an internal review because:
- it had already provided the complainant with the information
 - it could not answer questions on behalf of another organisation (namely, NHS England); and
 - it had provided the complainant with an internal review for his previous request.

Request 2 – FS50661772

8. On 5 September 2016 the complainant requested information of the following description:

"Please inform me whether or not you hold the information specified below.

If you do hold the requested information please send me a copy.

I am requesting a copy of all recorded information you hold regarding allegations that any of the General Practitioner's at the Dicconson Group Practice racially abused a patient.

Dicconson Group Practice's address is; Boston House, Frog Lane. Wigan. Lancs. WN6 7LB."

9. On 8 September 2016, the CCG responded. It said the complainant's request did not constitute an FOI request. It suggested the request was a request for personal data that could be obtained by submitting a subject access request (SAR) to the CCG.
10. The CCG went on to say that, because the request concerns a GP surgery, the complainant would probably need to make a SAR to the surgery itself or to NHS England. The CCG said it would be highly unlikely that the CCG would hold much, if any, information relating to "this incident".
11. Finally, the CCG said that as it was not categorising this request as an FOI request it was not obliged to confirm or deny it holds the information.
12. On 9 September 2016, the complainant asked the CCG to process his request under the FOIA or to advise him how he might rephrase the request so that it could be processed as an FOI request.
13. In correspondence to the complainant dated 14 September 2016, the CCG said it had considered all the complainant's requests and its responses. It said it now considered his requests to be unreasonable and persistent in nature and it would not respond to any similar or substantially similar requests. The CCG did not refer to any section of the FOIA but has subsequently confirmed to the Commissioner that it considers this request to be vexatious under section 14(1).
14. The complainant requested an internal review on 5 October 2016. On 5 October 2016 the CCG confirmed it would not carry out a review.

Scope of the case

15. The complainant contacted the Commissioner on 6 October 2016 to complain about how the CCG had handled request 1, and contacted the Commissioner on 4 January 2017 to complain about the way the CCG had handled request 2. The complainant's concerns are that the CCG:
 - was wrong not to handle request 2 under the FOIA initially

- failed to confirm or deny it holds information within the scope of his requests
- failed to provide this confirmation or denial within 20 working days
- failed to provide him with the information he requested
- failed to provide him with advice and assistance
- failed to provide him with appropriate refusal notices
- was wrong to categorise his requests as vexatious
- mishandled his internal review requests; and
- sent him misleading and intimidating communications.

16. The Commissioner's investigation has focussed on:

- whether the complainant's two requests can be categorised as vexatious under section 14(1)
- the CCG's refusal of the requests; and
- whether it complied with its obligation under section 16.

She has considered the complainant's other concerns within her analysis of the CCG's reliance on section 14(1) and in 'Other matters'.

Reasons for decision

Section 14 – vexatious and repeat requests

17. 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.
18. 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".
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. In its submission to the Commissioner, the CCG has said that whilst complying with the two individual requests in this case may not have 'unjustified and disproportionate' effect on it, when taking the wider context and history of the requests into account, it considers that this is the case.
25. The CCG has provided the Commissioner with a timeline of the contacts and requests that the complainant has had with it over the last four years. The CCG considers that these contacts refer in whole or in part to the same issue; namely a complaint that the complainant had against Ashton, Leigh and Wigan Primary Care Trust (PCT). In turn, this complaint appears to the Commissioner to be associated with an incident that happened at a particular GP Surgery approximately six years ago; namely Dicconson Group Practice referred to in request 2.
26. The CCG estimates that at least 70 hours work has been involved over the four year period of dealing with the complainant's contacts and queries. All PCTs were abolished in 2013 and the CCG says it has explained to the complainant more than once that it is not the successor body to Ashton, Leigh and Wigan PCT.

27. The Commissioner has reviewed the timeline the CCG has provided. It lists 67 contacts to and from the complainant from 6 September 2013 up to 1 August 2016 (69 contacts if the two current requests are included), with a very brief summary of each contact.
28. The Commissioner has noted the CCG's response to request 1 and its reference to the earlier response to a previous, substantially similar request that the complainant had submitted to the CCG on 18 July 2016. The complainant complained to the Commissioner about the CCG's response to that request because he was not satisfied that the CCG did not hold the information he requested.
29. That complaint resulted in her decision in FS50642904 in February 2017. The notice in that case discusses the arrangements that the CCG explained are in place following the abolition of PCTs; that is that the CCG is not the successor body to Ashton, Leigh and Wigan PCT and that the complainant should contact NHS England. The Commissioner found that the CCG did not hold the information requested in that case.
30. Her decision in FS50642904 came after the complainant had submitted the two requests that are the subject of this notice to the CCG. However, the Commissioner notes that, in responding to the 18 July 2016 request, the CCG had explained the post-PCT arrangements to the complainant during July 2016 ie *before* he submitted the current two requests. She considers that, at the point he submitted request 1, the CCG had already clearly explained these arrangements to the complainant (and that consequently it holds no information relating to Ashton, Leigh and Wigan PCT) – through its response to the previous request and through its other contacts with the complainant.
31. The Commissioner has also reviewed the timeline of the CCG's contacts and queries from the complainant. The summaries of each contact are brief but appear to concern, broadly, a complaint about a PCT (presumably Ashton, Leigh & Wigan PCT), a complaint about a GP (presumably at Dicconson Group Practice), a complaint the complainant submitted to the Parliamentary and Health Service Ombudsman (PHSO) and subject access requests submitted by the complainant under the Data Protection Act. The CCG appears to have provided the complainant with a Legacy Team address (presumably at NHS England) as far back as June 2014.
32. Having considered all the circumstances of request 1, the Commissioner is satisfied that the CCG has informed the complainant on more than one occasion that it does not hold any information concerning the former Ashton, Leigh and Wigan PCT as it is not the successor organisation to that PCT. She is satisfied that the complainant was aware that the CCG was not the successor organisation to the PCT in

question before he submitted his request of 2 August 2016.

Consequently she is satisfied that, at this point, the complainant's first request – which again concerns Ashton, Leigh and Wigan PCT legacy information – can be considered to be a vexatious request.

33. With regard to request 2, the Commissioner assumes that, before PCTs were abolished, Ashton, Leigh and Wigan PCT was the administrative body associated with Dicconson Group Practice. CCGs succeeded PCTs but, as previously discussed, the CCG has confirmed that it is not the successor body to Ashton, Leigh and Wigan PCT.
34. Nevertheless, it may not be unreasonable for an individual to think that the CCG in this case (Wigan Borough CCG) might hold historical information connected to the former Ashton, Leigh and Wigan PCT – such as historical information concerning incidents of the type the complainant has specified in his request about Dicconson Group Practice. The CCG might, or might not, also hold more recent information of this type regarding Dicconson Group Practice, in its own right.
35. As above, in this case the Commissioner is satisfied that the CCG has informed the complainant on more than one occasion that it is not the successor organisation to the former Ashton, Leigh and Wigan PCT and does not hold any information concerning this PCT.
36. However, the Commissioner is aware that request 2 concerns historical or recent information about Dicconson Group Practice, rather than Ashton, Leigh and Wigan PCT more generally. As such, it might be said that this particular request is not vexatious. However, the Commissioner has taken into account the CCG's submission (which, the Commissioner notes, is brief), the timeline of its contacts with the complainant over the last four years including its handling of request 1, her decision in FS50642904 and her investigations of a number of other complaints that the complainant has submitted to her about associated authorities' handling of requests on broadly similar subjects.
37. It appears to the Commissioner that the complainant's requests to the CCG are an attempt to use the FOIA to keep open matters that appear to have been dealt with, to the complainant's dissatisfaction, some time ago. Namely the complainant's complaint about an allegation of racial abuse concerning Dicconson Group Practice, which PHSO investigated and, the Commissioner understands, did not uphold. At this stage, when considered cumulatively with request 1 and four years of earlier contacts, the Commissioner is prepared to accept the CCG's categorisation of request 2 as vexatious. This is because the requests are now placing an unjustified burden on the CCG.

38. Regarding other of the complainant's associated concerns outlined at paragraph 15, section 1(1) of the FOIA places a duty on a public authority to confirm or deny information is held [section 1(1)(a)] and to provide the information to the applicant, if it is held [section 1(1)(b)]. Section 10(1) says an authority must comply with section 1(1) as soon as possible and within 20 working days.
39. However if, as in this case, an authority is relying on section 14(1) not to comply with a request, the obligations under section 1(1) and section 10(1) do not come into play. Obligations associated with section 14(1) are discussed under 'Section 17 – refusing a request'.

Section 16 – advice and assistance

40. Section 16(1) places a duty on a public authority to provide advice and assistance so far as it would be reasonable to expect the authority to do so.
41. This duty arises in certain situations. These are broadly: before an applicant has submitted a request for information and is clarifying with the public authority what information it holds; if a request for information is not clear to the public authority; and if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority may offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit.
42. With regard to both requests, and request 1 in particular, the Commissioner is satisfied that the CCG offered the complainant adequate and appropriate advice and assistance: it explained what 'legacy information' is and directed him to what it considers to be the relevant organisation (NHS England).
43. Having reviewed the CCG's correspondence with the complainant the Commissioner has found it to be prompt, polite and professional with no evidence that the CCG intended to deliberately distress or intimidate the complainant.

Section 17 – refusing a request

44. Section 17(5) says that an authority that is relying on a claim that section 14 (or section 12) applies, must, give the applicant a notice stating that fact within the time limit set out in section 10(1) – that is, 20 working days.
45. In the case of request 1, the complainant submitted his request on 2 August 2016. The CCG wrote to him and advised it was treating the request as vexatious under section 14(1), on 4 August 2016. This was within the 20 working day requirement.

46. In the case of request 2, the complainant submitted this request on 5 September 2016. The CCG wrote to the complainant on 14 September 2016 and said it considered his requests to be unreasonable and persistent in nature and that it would not respond to any similar or substantially similar requests. Although the response was provided within the 20 working day requirement, the CCG did not specifically refer to section 14(1) of the FOIA with regard to this request.
47. The Commissioner must therefore find that the CCG breached section 17(5) of the FOIA with regard to request 2.

Other Matters

48. Provision of an internal review is not a requirement under the FOIA but the Commissioner advises that public authorities should carry out a review as a matter of good practice.
49. In her guidance on section 14(1), the Commissioner says that a public authority should recognise the importance of the internal review stage in these cases, as this will be its last remaining opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision to rely on section 14(1) without the involvement of the Commissioner.
50. However, this is a recommendation. The CCG advised the complainant that it did not intend to review its decisions in these two cases, because it considered the requests to be vexatious. As explained above, the FOIA does not put an obligation on the CCG to carry out internal reviews of the two requests in this case.
51. Finally, the complainant is not satisfied because the CCG did not handle request 2 under the FOIA in the first instance. The Commissioner advises the CCG to review the requests it receives carefully. Its background with the complainant appears to have led the CCG to assume that the information being sought through request 2 concerned the specific allegation of racial abuse at Dicconson Group Practice in the incident in which the complainant was involved. This led it to suggest the complainant submit a Subject Access Request (under the Data Protection Act) for his personal data. In fact the request is for *any* such allegations concerning Dicconson Group Practice which, the Commissioner agrees, the CCG could have handled under the FOIA straight away, thus avoiding unnecessary correspondence with the complainant. As it was, the CCG went on to respond to the request under the FOIA within the 20 working day requirement, as detailed above.

Right of appeal

52. 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

53. 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.
54. 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

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Decision (including any steps ordered)

1. In two requests the complainant has requested information from Wigan Borough Clinical Commissioning Group ('the CCG') about particular personal data held and shared, and about an allegation of racial abuse at a specific GP surgery. 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 as follows:
 - The two requests are vexatious and the CCG is not obliged to comply with them under section 14(1) of the FOIA.
 - The CCG provided adequate advice and assistance and complied with its obligation under section 16(1).
 - The CCG's refusal of request 2 breached section 17(5).
3. The Commissioner does not require the public authority to take any steps.

Requests and response

Request 1 – FS50659774

4. On 2 August 2016 the complainant made the following request for information under the FOIA:

"1). What recorded information do you hold which states what personal data processed from the 01st April 2009 by Ashton, Leigh and Wigan Primary Care Trust (ALWPCT) during their handling of service user's complaints do you hold.

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Scope of the case

15. The complainant contacted the Commissioner on 6 October 2016 to complain about how the CCG had handled request 1, and contacted the Commissioner on 4 January 2017 to complain about the way the CCG had handled request 2. The complainant's concerns are that the CCG:
 - was wrong not to handle request 2 under the FOIA initially

- failed to confirm or deny it holds information within the scope of his requests
- failed to provide this confirmation or denial within 20 working days
- failed to provide him with the information he requested
- failed to provide him with advice and assistance
- failed to provide him with appropriate refusal notices
- was wrong to categorise his requests as vexatious
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16. The Commissioner's investigation has focussed on:

- whether the complainant's two requests can be categorised as vexatious under section 14(1)
- the CCG's refusal of the requests; and
- whether it complied with its obligation under section 16.

She has considered the complainant's other concerns within her analysis of the CCG's reliance on section 14(1) and in 'Other matters'.

Reasons for decision

Section 14 – vexatious and repeat requests

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23. 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.
24. In its submission to the Commissioner, the CCG has said that whilst complying with the two individual requests in this case may not have 'unjustified and disproportionate' effect on it, when taking the wider context and history of the requests into account, it considers that this is the case.
25. The CCG has provided the Commissioner with a timeline of the contacts and requests that the complainant has had with it over the last four years. The CCG considers that these contacts refer in whole or in part to the same issue; namely a complaint that the complainant had against Ashton, Leigh and Wigan Primary Care Trust (PCT). In turn, this complaint appears to the Commissioner to be associated with an incident that happened at a particular GP Surgery approximately six years ago; namely Dicconson Group Practice referred to in request 2.
26. The CCG estimates that at least 70 hours work has been involved over the four year period of dealing with the complainant's contacts and queries. All PCTs were abolished in 2013 and the CCG says it has explained to the complainant more than once that it is not the successor body to Ashton, Leigh and Wigan PCT.

27. The Commissioner has reviewed the timeline the CCG has provided. It lists 67 contacts to and from the complainant from 6 September 2013 up to 1 August 2016 (69 contacts if the two current requests are included), with a very brief summary of each contact.
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question before he submitted his request of 2 August 2016.

Consequently she is satisfied that, at this point, the complainant's first request – which again concerns Ashton, Leigh and Wigan PCT legacy information – can be considered to be a vexatious request.

33. With regard to request 2, the Commissioner assumes that, before PCTs were abolished, Ashton, Leigh and Wigan PCT was the administrative body associated with Dicconson Group Practice. CCGs succeeded PCTs but, as previously discussed, the CCG has confirmed that it is not the successor body to Ashton, Leigh and Wigan PCT.
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35. As above, in this case the Commissioner is satisfied that the CCG has informed the complainant on more than one occasion that it is not the successor organisation to the former Ashton, Leigh and Wigan PCT and does not hold any information concerning this PCT.
36. However, the Commissioner is aware that request 2 concerns historical or recent information about Dicconson Group Practice, rather than Ashton, Leigh and Wigan PCT more generally. As such, it might be said that this particular request is not vexatious. However, the Commissioner has taken into account the CCG's submission (which, the Commissioner notes, is brief), the timeline of its contacts with the complainant over the last four years including its handling of request 1, her decision in FS50642904 and her investigations of a number of other complaints that the complainant has submitted to her about associated authorities' handling of requests on broadly similar subjects.
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Section 16 – advice and assistance

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41. This duty arises in certain situations. These are broadly: before an applicant has submitted a request for information and is clarifying with the public authority what information it holds; if a request for information is not clear to the public authority; and if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority may offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit.
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43. Having reviewed the CCG's correspondence with the complainant the Commissioner has found it to be prompt, polite and professional with no evidence that the CCG intended to deliberately distress or intimidate the complainant.

Section 17 – refusing a request

44. Section 17(5) says that an authority that is relying on a claim that section 14 (or section 12) applies, must, give the applicant a notice stating that fact within the time limit set out in section 10(1) – that is, 20 working days.
45. In the case of request 1, the complainant submitted his request on 2 August 2016. The CCG wrote to him and advised it was treating the request as vexatious under section 14(1), on 4 August 2016. This was within the 20 working day requirement.

46. In the case of request 2, the complainant submitted this request on 5 September 2016. The CCG wrote to the complainant on 14 September 2016 and said it considered his requests to be unreasonable and persistent in nature and that it would not respond to any similar or substantially similar requests. Although the response was provided within the 20 working day requirement, the CCG did not specifically refer to section 14(1) of the FOIA with regard to this request.
47. The Commissioner must therefore find that the CCG breached section 17(5) of the FOIA with regard to request 2.

Other Matters

48. Provision of an internal review is not a requirement under the FOIA but the Commissioner advises that public authorities should carry out a review as a matter of good practice.
49. In her guidance on section 14(1), the Commissioner says that a public authority should recognise the importance of the internal review stage in these cases, as this will be its last remaining opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision to rely on section 14(1) without the involvement of the Commissioner.
50. However, this is a recommendation. The CCG advised the complainant that it did not intend to review its decisions in these two cases, because it considered the requests to be vexatious. As explained above, the FOIA does not put an obligation on the CCG to carry out internal reviews of the two requests in this case.
51. Finally, the complainant is not satisfied because the CCG did not handle request 2 under the FOIA in the first instance. The Commissioner advises the CCG to review the requests it receives carefully. Its background with the complainant appears to have led the CCG to assume that the information being sought through request 2 concerned the specific allegation of racial abuse at Dicconson Group Practice in the incident in which the complainant was involved. This led it to suggest the complainant submit a Subject Access Request (under the Data Protection Act) for his personal data. In fact the request is for *any* such allegations concerning Dicconson Group Practice which, the Commissioner agrees, the CCG could have handled under the FOIA straight away, thus avoiding unnecessary correspondence with the complainant. As it was, the CCG went on to respond to the request under the FOIA within the 20 working day requirement, as detailed above.

Right of appeal

52. 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

53. 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.
54. 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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