

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 January 2018

**Public Authority:** East of England Ambulance Service NHS Trust

**Address:** Whiting Way  
Melbourne  
Cambridgeshire  
SG8 6EN

### Decision (including any steps ordered)

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1. The complainant's request consisted of 20 questions relating to paramedics' pay arrangements. East of England Ambulance Service NHS Trust (the Trust) provided a response to questions 1, 2, 3, 6, 13, 15, 18, 19 and 20. However, it refused to answer questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17, citing section 14(1).
2. The Commissioner's decision is that the Trust was not entitled to refuse to answer questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17 of the request under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17 of the request which does not rely on section 14(1) of the FOIA.
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

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5. On 26 January 2017, the complainant made a request for information to the Trust via the WhatDoTheyKnow website, asking for information in the following terms:

*"As per the terms of the FOI Act, please respond to the following.*

- 1) How many paramedics do the Trust employ on Band 5 as of 01/01/2017?*
- 2) How many non-specialist paramedics do the Trust employ on Band 6 as of 01/01/2017?*
- 3) How many ECP, CCP and Station Supervisor paramedics do the Trust employ on Band 6 as of 01/01/2017?*
- 4) The Trust are currently advertising on NHS Jobs for Band 5 Graduate Paramedics (Ref: 247-EOXGRADPARA1701). The advert states that the Trust are offering Senior status and Band 6 pay after 12 months post registration experience. This is despite a Need to Know article on the Trust intranet that states that a Band 5 Newly Qualified Paramedic role will apply to those who qualify after 1st September 2016. Why is the Trust promising to pay Band 6 after 12 months when it admits that the details currently available suggest that the National Pay Band Agreement will require 2 years post-qualification experience prior to promotion to Band 6?*
- 5) The Trust are currently advertising on NHS Jobs for Band 6 Senior Paramedics (Ref: 247-A&ESENIORPARA1701). The advert states that the Trust require only 12 months post qualification experience, or prior service as a UEA Q-SAP, in order to join as a Band 6 Senior Paramedic. This is despite a Need to Know article on the Trust intranet that states that a Band 5 Newly Qualified Paramedic role will apply to those who qualify after 1st September 2016. Why is the Trust promising to pay Band 6 immediately (with only 12 months post-qualification experience) when it admits that the details currently available suggest that the National Pay Band Agreement will require 2 years post-qualification experience prior to offering Band 6?*
- 6) The Trust have recently had a large number of internal staff qualify as Paramedics through the Northampton University programme, and also over the previous 6 years through the University of East Anglia programme. Please confirm how many of these staff registered as HCPC Paramedics AFTER 1st September 2016?*
- 7) The Trust have offered immediate Band 6 status to all graduates from the Northampton University and University of East Anglia, even those who registered AFTER 1st September 2016. Please confirm why the Trust have breached the National Pay Band Agreement which states that all newly qualified paramedics after this date must stay on Band 5 for a period up to 2 years prior to promotion to Band 6?*

8) *The Trust have refused to provide assurances to their staff that the current intake of Student Paramedics will be eligible for promotion to Band 6, at the point they are either 12 months post qualification or 12 months post expiry of their training contract, whichever comes first (where their progression was delayed by the Trust). This is despite a collective grievance, national media coverage and an open letter to the Chief Executive signed by hundreds of staff. All the affected staff joined the Trust when Section 3.1 of the Regional Senior Pay Uplift Agreement stated that: "This agreement applies to all staff employed by EEAST, and sets a precedent for all staff that can meet the eligibility criteria, now or in the future to progress, if they choose this as an option." Please clarify why the Trust is refusing to honour a signed agreement between Unison and the CEO that clearly states a precedent has been created for progression after 12 months, not 2 years?*

9) *The Trust have offered immediate Band 6 status to all graduates from the Northampton University and University of East Anglia courses, without a 12 month post qualification wait. The Trust however will not even offer a 12 month wait for the new Student Paramedic graduates from Anglia Ruskin University and the University of East Anglia. The reasons given for offering immediate Band 6 status to graduates from the predecessor courses, were that these staff had practised as Emergency Medical Technicians in the interim, which included mentoring Trainee Technicians and ECAs. The other reason given was that some of these staff had their progression delayed by the Trust and should have qualified much sooner. Is the Trust aware that graduates from the new Student Paramedic programme have also practised as EMTs, mentored Trainee Techs, ECAs and SAP1 staff, as well as having their progression severely delayed by the Trust's failure to commission a HCPC approved programme prior to recruiting several hundred students? If the Trust is aware of this, please confirm why the senior management team refuse to offer equal treatment to graduates of all pathways, in accordance with the principles of equality and equitable treatment?*

10) *The Trust have received a collective grievance from Unison regarding pay progression to Band 6 in April 2016. Despite this, the Trust has refused to meet with Unison under the collective grievance policy to discuss this issue, despite previously acknowledging the grievance and promising to look into arranging a suitable meeting date. Given the media coverage, open letter to the CEO signed by hundreds of staff and comments from senior MPs, why has the Trust not acted with integrity and agreed to meet with Unison to discuss the issue?*

11) *The Trust have mentioned the new National Pay Band Agreement in several Intranet posts, which all mention that the Trust will need to meet with Unison to agree how the deal will be implemented locally in*

*EEAST. Please provide a list of dates when the Trust has met or has agreed to meet with Unison and what the outcomes of these talks were?*

*12) The National Pay Band Agreement was intended to improve the recruitment and retention of paramedics. It was never intended to worsen locally agreed terms and conditions. The agreement allows leeway for individual trusts to vary the 2 years post qualification period, which is termed 'up to' 24 months. Given this information, will the Trust provide assurances that the new agreement will be implemented locally in a manner which ensures no member of staff is worse off under the new deal in comparison to how they would have fared under the existing local agreement?*

*13) Will the Trust retrospectively change the terms and conditions of paramedics who qualified after 1st September 2016, who are now on Band 6, if the national agreement states that these staff members must serve 2 years as a Band 5 paramedic prior to progression to Band 6?*

*14) Does the Trust agree that the Regional Senior Pay Uplift Agreement created a precedent for all staff to progress in the future, and if so, does it acknowledge that this is a contractual change for many hundreds of employees?*

*15) Does the Trust acknowledge that the Regional Senior Pay Uplift Agreement remains in force until the implementation arrangements for the national agreement are jointly agreed with Unison, and until that date, will existing applications for progression under the Regional Senior Pay Uplift Agreement continue to be processed as before, using the existing criteria?*

*16) Has the Chief Executive Officer read the Open Letter from Student Paramedics (# Treat Us Fairly) and when, if at all, does he intend to reply to the concerns raised?*

*17) Has the new agreement been discussed by the senior management team, and has the subsequently collective grievance from SAPs been discussed by the senior management team? In the spirit of openness, transparency and accountability, please disclose the content of any discussions recorded electronically by e-mail or through minutes of meetings. The requester believes that there is an overriding public interest factor in revealing how a public organisation comes to decisions regarding spending tax payers money and how it balances these decisions against the concerns of hundreds of public sector workers, who are likely to ballot for industrial action if the decision does not take full account of their concerns.*

*18) Please provide a copy of the Newly Qualified Paramedic job description to be used within EEAST. If this is not yet available, please confirm which job description is being signed by newly registered paramedics in the Trust. If the standard Band 5 Paramedic job description is being used, how does the Trust intend to impose restrictions on practise, if these are subsequently required by virtue of the National Pay Banding Agreement?*

*19) Please provide details of any restrictions on practise AND/OR supportive measures the Trust is considering provided for the Newly Qualified Paramedic role? E.g. limited rights to discharge patients on scene or restrictions on working alone or with junior staff.*

*20) By what date does the Trust expect to have fully implemented the new National Pay Banding Agreement, given that the Department of Health set a deadline of February 2017 for most Trusts?"*

6. The Trust responded on 24 February 2017. It decided "to apply section 14(1) of the FOIA to some or all of [the] request and is therefore not required to comply or make a response to it". However, the Trust decided that questions 1, 2, 3, 6, 13, 15, 18, 19 and 20 did not have any potential vexatious intent, and therefore it provided a response to these questions only.
7. The complainant requested an internal review on the 3 March 2017. Following an internal review the Trust wrote to the complainant on the 7 April 2017 maintaining its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on the 9 April 2017 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of this case is to determine whether the Trust has correctly applied section 14(1) of the FOIA to questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17 of the request.

## **Reasons for decision**

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### **Section 1 – general right of access**

10. Section 1(1) of FOIA states that "any person making a request for information to a public authority is entitled—

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

## **Section 14 – vexatious and repeat requests**

11. Section 14(1) of the 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.
12. 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*".
13. 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.
14. 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).
15. 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.

16. 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<sup>1</sup>. 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.
17. 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.
18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request when this is relevant. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.

### **The Trust's representation**

19. In its submission to the Commissioner, the Trust provided details of the detrimental impact of complying with each question. In particular, the Trust has explained that it is currently investigating a collective grievance in relation to the issues raised in the questions in the request and it believes that releasing this information would impact upon the nature and objectivity of this investigation. The Trust believes that this request has been made to disrupt the course of this investigation and taint any outcome that is arrived at before completion of the investigation.
20. The Trust is of the view that responding to these questions would have a detrimental impact upon the staff involved in both the investigation and the gathering of the information requested due to the improper use of the Act to influence an ongoing investigation. The Trust also considers that the questions in the request intend to cause annoyance to the Trust with the aim of ostracizing a specific employee of the Trust and

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

damaging their reputation, particularly while the outcome of the investigation is unknown.

21. The Trust has stated that there have been a number of public announcements around the National Pay Band Agreement and the Regional Senior Pay Uplift Agreement and the Trust believes that the complainant is pursuing a personal grudge (or a grudge/campaign on behalf of others) in relation to this.
22. The Trust has gone on to explain in its submission to the Commissioner why it believes this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value. In particular, the Trust accepts that there is some value behind the request; however the Trust's view is that the purpose of the request is to disrupt and impede the Trust's work and would impose a burden upon the authority. The Trust has referred to the judgement in *Dransfield v ICO & Devon County Council; Craven v ICO & Department for Energy and Climate Change 2015*. The Trust has stated that although it accepts that the information requested by the complainant may be of value to the public, it does not mean the Trust is obliged to respond if the request is considered vexatious.
23. The Trust has also stated that it considered the comment made by the complainant in her request for internal review of 3 March 2017, specifically the assertion that the information requested is of public interest and the purpose behind the request. The Trust has noted that it is not required to apply the public interest test when relying upon section 14 of the FOIA.
24. The Trust has stated that as the request relates to a collective grievance in the workplace, it considers that the purpose of the request is to cause disruption to the Trust with the aim of pursuing a grudge, not necessarily on behalf of the complainant herself but on behalf of others. The Trust has explained that the complainant made reference to an article on an internal news bulletin in the request, which leads the Trust to believe that the complainant is working alongside/on behalf of Trust employees and some of those involved with the collective grievance investigation.
25. The Trust has stated that it would be required to spend a disproportionate amount of resources to respond to the request and the Trust has explained that it provided some information in order to aid/facilitate the complainant where it can.



## **The Commissioner's view**

26. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
27. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
28. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
29. The Commissioner considers that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden.
30. In terms of the Trust's reliance on section 14(1) to refuse to answer questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17 of the request, the Commissioner has assessed the value of the information requested and whether it was reasonable to ask for it. She accepts that there is a wider public interest in the funding of employees in the public sector. The Commissioner considers this would lend weight to the view that it was reasonable to make the request.
31. The Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance and referred to in paragraphs 15-17 of this decision notice. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious.
32. The Commissioner notes that in the Trust's submission to her it has provided details of a number of 'indicators' that identify a vexatious request. These include the following –
  - The detrimental impact it would have on the staff
  - personal grudge
  - intention to cause annoyance

- burden on the authority

However, the Trust has not provided any evidence to support its assertion that the request contains these indicators.

33. The Commissioner appreciates the Trust's view that answering some of the questions in the request would have an impact on the investigation of a collective grievance. However, this does not mean that these parts of the request are vexatious. The Trust may therefore wish to consider whether other exemptions contained within Part 2 of the FOIA would provide a more appropriate basis to withhold this information.
34. In the Trust's submission to the Commissioner, it has not explained why it chose to respond to parts of the request without any real reason as to why these are distinct from the parts it considers vexatious. The Commissioner is of the view that this weakens the Trust's position in relying on section 14(1) of the FOIA to refuse to respond to the rest of the request.
35. The Commissioner does not consider that the Trust has made a persuasive case that section 14(1) has been correctly applied in the circumstances of this particular case. The Trust has not demonstrated that the request represented a disproportionate approach in the circumstances of the case, given the purpose and value that it had.
36. In reaching a conclusion, the Commissioner refers back to the point that a public authority should expect there may be some degree of annoyance or disruption in committing to being transparent and the purpose of section 14 is to ensure that there is not a disproportionate level of disruption, burden or distress placed on a public authority by requests which have no real value or purpose.
37. In this case, the Commissioner is of the view that the request has value and purpose, and the Trust has failed to demonstrate that the parts of the request it has refused to comply with is manifestly unjustified, inappropriate or an improper use of a formal procedure. Therefore, the Commissioner's decision is that the Trust is not entitled to rely on section 14(1) of the FOIA to refuse to comply with questions 4, 5, 7, 8, 9, 10, 11, 12, 14, 16 and 17 of the request.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
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