

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2018

Public Authority: Barking, Havering and Redbridge University Hospitals NHS Trust

Address: Queen's Hospital
Rom Valley Way
Romford
Essex
RM7 0AG

Decision (including any steps ordered)

1. The complainant made an eight part request on 9 April 2017 (bullet points j) to q)), a four part request on 19 April 2017, and an eight part request on 20 April 2017. The requests are for information relating to reports and enquiries concerning the security and availability of drugs at Queen's Hospital, Romford.
2. Barking, Havering and Redbridge University Hospitals NHS Trust (the Trust) provided some of the requested information, but has explained that it does not hold other information falling within the scope of the requests. The Trust has also refused to provide some of the requested information under sections 14(1), 21(1), and 43(2) of the FOIA.
3. During the Commissioner's investigation, the Trust disclosed some further information to the complainant. However it maintained that it does not hold some of the information requested in points p) and q) of the request dated 9 April 2017. The Trust maintained its reliance on section 14(1) of the FOIA as a basis for refusing to provide the withheld information in relation to points k), n), o), and p) of the request dated 9 April 2017, and points 5), 6) and 7) of the request dated 20 April 2017. The Trust also relied on section 12(1) of the FOIA as a basis for refusing to provide the withheld information in relation to point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017.
4. The Trust has maintained its reliance on section 43(2) of the FOIA as its basis for withholding some of the information requested in parts 3 of the requests dated 19 and 20 April 2017. However, the complainant has

informed the Commissioner that she does not require any investigation relating to the information withheld under section 43(2) of the FOIA. The Commissioner has therefore not considered whether the Trust is entitled to rely on this exemption.

5. The Commissioner's decision is that the Trust –

- Has, on the balance of probabilities, provided all the information that it holds within the scope of point q) of the request dated 9 April 2017, and has complied with its obligations under section 1(1) of the FOIA with regards to this part of the request.
- Has failed to state whether or not it holds any manual copies of the email communications falling within the scope of point p) of the request dated 9 April 2017, and has not complied with its obligations under section 1(1) of the FOIA with regards to this part of the request.
- Has breached section 10(1) of the FOIA with regards to all three requests, as it did not provide the complainant, within 20 working days, the information it held within the scope of these requests. In addition, the Trust did not communicate to the complainant, within 20 working days, whether or not it held any manual copies of the email communications falling within the scope of point p) of the request dated 9 April 2017.
- Has correctly applied section 12(1) of the FOIA in relation to point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017. It has also complied with the requirements of section 16(1) of the FOIA, in that no meaningful advice could have been provided as to how to refine the information requested in these parts of the requests for information. However, in failing to issue a refusal notice within the time for compliance, the Trust breached section 17(5) of the FOIA.
- Has correctly applied section 14(1) of the FOIA in relation to points k), n), o), and p) of the request dated 9 April 2017, and points 5), 6) and 7) of the request dated 20 April 2017.

6. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- The Trust must provide the complainant with a response to point p) of the request dated 9 April 2017, in relation to manual copies of any email communications in accordance with its obligations under the FOIA.

7. 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.

Background

8. A relative of the complainant was an employee of the Trust from July 2013 until they were dismissed in August 2014. The complainant's relative submitted a claim against the Trust for unfair dismissal to the Employment Tribunal, which included claims that the relative had made protected disclosures under the Public Interest Disclosure Act 1998, and alleged that the relative had been subject to detriments and then dismissed due to these disclosures. The Commissioner understands that the protected disclosures related to concerns around uncontrolled access to drugs. The complainant represented their relative at the Employment Tribunal, which did not uphold the claim for unfair dismissal.
9. The complainant and their relative continued to correspond with the Trust following the outcome of the Tribunal hearing.
10. The Commissioner understands that the complainant was advised by the Trust in August 2014 that the matter of uncontrolled access to drugs would not be investigated further and that all the information that was available was provided to her for the Tribunal hearing. However, prior to these requests, the complainant wrote to the Trust on 15 March 2017 to complain that the Trust had still not resolved the matter of uncontrolled access to drugs. This resulted in the Trust classifying both the complainant and their relative as vexatious and unreasonably persistent complainants, in accordance with its complaints policy. This decision was explained by the Trust in its letter to the complainant dated 7 April 2017. The Trust stated that it would not be responding to any further communications of this nature from the complainant or their relative.
11. The complainant subsequently submitted these requests for information to the Trust.

Request and response

12. On 9 April 2017, the complainant wrote to the Trust and requested information of the following description:

"List of specific details required but entire reports and enquiries are requested relating to Queen's Hospital, Romford of security and availability of drugs and non-compliance with the safe locking away of drugs

All details about Queen's Hospital, Romford of security and availability of drugs, including

- j. Details relating to death on Mandarin B ward related to open PODs prior to August 2013. Details of any other deaths specifically related to drug access by patients/free access to drugs either before or after August 2013.*
 - k. Reports and details of whether or not the CQC found any clinical concern/health and safety risk in relation to trolleys being left unlocked, key access/uncontrolled drug key availability/POD access/administration of drugs by nurses (August 2013 to date), including all the papers on which the reports were based.*
 - l. Detail of Guardian appointed for Queen's hospital for whistle blowing – when was this appointment made/when was the system first operational at Queen's Hospital – name of first guardian appointed and any details (2013 to date).*
 - m. Details of how many cases the Guardian dealt with during 2013, 2014, 2015.*
 - n. Details of any findings/improvements needed/made at Queen's Hospital while in special measures in relation to nursing trolleys being left unlocked, key access/uncontrolled drug key availability/POD access/ administration of drugs by nurses (August 2013 to date).*
 - o. Details of all reasons found for unlocked trolleys/PODs (2013 to date).*
 - p. Details of [redacted name 1], Deputy Chief Nurse/[redacted name 2]/and or CQC concerns/reports/discussions/other in relation to key availability/drug access on Mandarin B and throughout the hospital (August 2013-August 2014).*
 - q. All background papers/consultations and report on the formulation of a Trust policy for drug key access for nurses (August 2013 to date)."*
13. On 19 April 2017, the complainant wrote to the Trust and requested information of the following description –
- 1. "Was there a guardian service in place at Queen's Hospital Romford during 2013-2016, in relation to whistle blowing?*
 - 2. Was this service internally or externally provided and by who? Details please.*
 - 3. Was there a contract with an agency or other body – copy of the contract please.*

4. *What were the rules/arrangements of the service?"*
14. On 20 April 2017, the complainant wrote to the Trust and requested information of the following description –
1. *"Was there a guardian service in place at Queen's Hospital Romford during 2013-2015 inclusive, in relation to whistle blowing?"*
 2. *Was this service internally or externally provided and by who?"*
 3. *Was there a contract with an agency or other body – copy of the contract please.*
 4. *What were the rules/arrangements of the service and statistics of how many cases for the years 2013-2015 inclusive?"*
 5. *Details of clinical concern/health and safety risk in relation to nursing trolleys being left unlocked/key access/POD access, 2013 to date, and enquiries by management.*
 6. *Details of findings/improvements needed/made at Queen's Hospital in relation to nursing trolleys being left unlocked, key access/POD access, 2013 to date if not included in (5).*
 7. *Details of all reasons found for unlocked trolleys/PODs (2013 to date) if not included in 5-6 above.*
 8. *Details of death on Mandarin B ward related to open PODs prior to August 2013; and data of avoidable deaths related to nursing trolleys being left unlocked, key access/POD access before and after August 2013."*
15. The Trust aggregated the complainant's requests for information due to their similarities and sent a single response to all three requests on 27 June 2017. The Trust stated that its response would not address any matters relating to POD (patients' own drugs) locker keys/access, as this had been addressed in previous communications from the Trust, and its position had been made clear in its letter to the complainant dated 4 April 2017 (although the Commissioner understands this to be the letter dated 7 April 2017). The Trust also referred the complainant to this explanation in response to points j) and o) of the request dated 9 April 2017, and points 5) – 8) of the request dated 20 April 2017.
16. In response to points k), n) and p) of the request dated 9 April 2017, the Trust refused to provide this information citing section 21(1) (information accessible by other means) of the FOIA as its basis for doing so.
17. In response to point q) of the request dated 9 April 2017, the Trust explained that the guidance on the storage and access by staff of controlled drugs is provided in the Trust's "*Medicines Policy (June 2016)*". The Trust explained that this was formerly known as the "*Medicines Care, Custody, Prescribing and Administration Policy*".

18. In response to points l) and m) of the request dated 9 April 2017, and points 1) – 4) of the requests dated 19 and 20 April 2017, the Trust confirmed that the Guardian Service commenced in the Trust on the 27 June 2013 and confirmed the contract status. The Trust also provided the complainant with an extract of this contract but refused to provide a copy of the full contract, citing section 43(2) (disclosure likely to prejudice the commercial interests of any person) of the FOIA as its basis for doing so.
19. The Trust went on to explain how the Guardian Service deals with whistleblowing concerns and provided copies of the Guardian Service's performance summaries outlining the number of cases they had dealt with in the period 2013-2015 inclusive.
20. The complainant requested an internal review on 8 July 2017 explaining that the Trust had not supplied her with any of the information she had requested.
21. The Trust sent the outcome of its internal review on 19 September 2017. In response to points j) and o) of the request dated 9 April 2017, and points 5) – 8) of the request dated 20 April 2017, the Trust refused to provide information relating to "*matters referencing PODs / drug access / key access / nursing trolleys etc.*" citing section 14(1) (vexatious requests) of the FOIA as its basis for doing so.
22. The Trust maintained its position in refusing to provide the information requested in points k), n) and p) of the request dated 9 April 2017 relating to CQC inspections, again citing section 21(1) of the FOIA as its basis for doing so.
23. In response to point q) of the request dated 9 April 2017, the Trust reiterated the advice provided in its letter to the complainant dated 27 June 2017. The Trust provided details of its policy development. It also provided an extract from the Trust's "*Medicines Care, Custody, Prescribing and Administration Policy*" and its "*Medicines Policy*", explaining the responsibility for the controlled drugs cupboard keys.
24. In response to points l) and m) of the request dated 9 April 2017, and points 1) – 4) of the requests dated 19 and 20 April 2017, the Trust maintained its original position and withheld the full contract citing section 43(2) of the FOIA as its basis for doing so.

Scope of the case

25. The complainant initially contacted the Commissioner on 22 May 2017 to complain about the way her requests for information had been handled.

Correspondence was exchanged between the Commissioner and the complainant between 29 June and 6 July 2017 in order to establish the nature of the complaint, and to request further information to support the complaint.

26. Upon receiving the further information from the complainant, the Commissioner wrote to her on 13 July 2017 to explain that before accepting complaints, she requires public authorities to be allowed the opportunity to respond to any complaints the requester may have about the way in which a request has been dealt with. The Commissioner therefore requested that the complainant await the outcome of her internal review request.
27. On 22 August 2017, the complainant wrote to the Commissioner to complain about the time taken for the Trust to carry out the internal review that she had requested. The Commissioner wrote to the Trust on 7 September 2017 and requested that it issue an internal review decision as soon as is practicable and within 20 working days.
28. On 21 September 2017, the complainant wrote to the Commissioner to complain about the internal review response that she had received from the Trust.
29. During the course of the Commissioner's investigation, the Trust has reviewed its application of section 14(1) and section 21(1) of the FOIA in respect to points k), n) and p) of the request dated 9 April 2017 relating to the CQC's findings and investigations. The Trust previously provided the complainant with a direct link to the CQC's website and the reports for the Trust. However, it has stated that it should have considered that there was no electronic communications from the complainant and therefore a hard copy would have been a more appropriate form of a response. The Commissioner understands that the Trust has sent the complainant hard copies of the CQC reports from 2013 to 2017 on the 26 October 2017.
30. With regards to point p) of the request dated 9 April 2017, and in particular email communications between the members of staff named in this part of the request, the Trust has stated that no electronic copies of the communications are held on file.
31. Furthermore, the Trust has reviewed its application of section 43(2) of the FOIA in respect to points l) and m) of the request dated 9 April 2017, and points 1) – 4) of the requests dated 19 and 20 April 2017 for the Guardian Service contract and data. The Commissioner understands that the Trust sent the complainant a redacted copy of the contract on the 26 October 2017. The Trust has stated that section 43(2) of the FOIA applies to the information in the contract that it had redacted.

32. Due to there having been further communications between the Trust and the complainant regarding the requests for information during the course of the Commissioner's investigation, the Commissioner wrote to the complainant on 15 February 2018 to establish the current position regarding the requests, and whether the complainant still had concerns about the Trust's handling of the requests.
33. The complainant responded on 25 February 2018, in which she clarified her position in relation to her requests. In particular, she stated that she had not been provided with information relating to points j), k), n), o), p) and q) of the request dated 9 April 2017, and points 5) – 8) of her request dated 20 April 2017.
34. The Commissioner considers the scope of this case is to determine whether the Trust is correct when it says that it does not hold further information in relation to points p) and q) of the request dated 9 April 2017.
35. The Commissioner will also consider whether the Trust is entitled to rely on section 12(1) of the FOIA as a basis for refusing to provide the withheld information in relation to point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017.
36. The Commissioner will also look at whether the Trust is entitled to rely on section 14(1) of the FOIA as a basis for refusing to provide the withheld information in relation to points k), n), o), and p) of the request dated 9 April 2017, and points 5), 6) and 7) of the request dated 20 April 2017.
37. The Commissioner will also consider whether the Trust has complied with its obligations under sections 10(1), 16(1) and 17(5) of the FOIA.

Reasons for decision

Section 1 – general right of access

38. Section 1(1) of the FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.
39. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

40. In this case the dispute is over what information is held in relation to the email communications referred to in point p), and the background information requested in point q), of the request dated 9 April 2017.
41. In light of the Commissioner's investigation, the Trust has stated that its FOI team has again reviewed any parts of the requests that could be considered a new request under the FOIA and not on matters that had already been exhausted, particularly through a legal process. The Trust subsequently wrote to the complainant on 26 October 2017 with the outcome of its review.
42. With regards to point p) of the request dated 9 April 2017, and in particular the email communications exchanged between the staff members named in this part of the request, the Trust has explained that these communications were provided to the complainant as part of the evidence for the Employment Tribunal hearing and that there are no electronic copies held on file. The Trust has stated in its submission to the Commissioner that all inboxes, sent boxes, deleted files/folder and archives have been checked again in light of the Commissioner's investigation and no electronic copies are held on file.
43. The Trust has explained that the first member of staff named in this part of the request has undertaken a search of all their emails, including their archived folders. The member of staff has advised the Trust that due to workloads and the nature of their role, they maintain a regular routine of clearing archives and emptying their folders, and was therefore unable to produce any historical emails dating back to 2013. The member of staff has advised that they attended the Tribunal hearing and recalls that any relevant evidence would have formed part of the hearing.
44. In response to the second member of staff named in this part of the request, the Trust has explained that this individual left the Trust in 2014. It has stated that its IT department has confirmed that once an individual leaves the Trust, their email account is archived for a maximum of six months and then deleted. It has gone on to explain that where emails are restored, they can only go back to a maximum of two years due to storage limitations. The Trust has therefore stated that emails for this member of staff cannot be accessed.
45. The Trust has reiterated in its submission to the Commissioner that the complainant had access to all relevant evidence shared during the Tribunal and does not believe that it is an effective use of NHS resources to check through a file that was already shared in its entirety.
46. Having considered the Trust's position in relation to the email communications exchanged between the staff members named in this

part of the request, the Commissioner must conclude that the Trust has failed to properly search for this information to establish whether the information is held. Whilst the Trust has searched its electronic records and has communicated with the member of staff named in this part of the request that is still employed at the Trust, it has not searched the Employment Tribunal file to establish whether it contains any email communications. Furthermore, the Trust has failed to state whether or not it holds manual copies of the email communications falling within the scope of point p) of the request dated 9 April 2017.

47. It is therefore clear to the Commissioner that the Trust has not issued a response that complies with section 1(1) of the FOIA in relation to point p) of the request dated 9 April 2017.
48. In response to point q) of the request dated 9 April 2017, the Trust has stated that it made it clear to the complainant in its letter to her dated 19 September 2017 that a new policy was not formulated on the basis of the complainant's relative's disciplinary hearing. The Trust reiterated that it already had policies in place during the period in question and the relevant extracts were provided to the complainant.
49. With regards to this part of the complainant's request for information, it appears that she is asking for the background information on the formulation of a Trust policy for drug key access for nurses.
50. The Commissioner understands the reasons why the complainant considers that additional information should be held in relation to point q) of the request dated 9 April 2017. However, the Commissioner can only consider what information is actually held at the time the request is received. In this case, it appears that the Trust already had existing policies in place on the matter of drug key access for nurses. Extracts from the relevant policies were provided to the complainant. A policy was therefore not formulated, as there were already existing policies in place. Having considered the responses from the Trust, it is the Commissioner's view that, on the balance of probabilities, the Trust does not hold any additional information relevant to point q) of the request dated 9 April 2017.

Section 10 – time for compliance

51. Where a public authority is obliged to communicate the requested information, section 10 provides that a public authority must do so within 20 working days of the date the request was received.
52. The requests in question were made on 9, 19 and 20 April 2017. The Trust should therefore have provided its responses to the requests on 9, 18 and 19 May 2017 respectively.

53. In this case the Trust provided a response to the requests on the 27 June 2017, outside of the time for compliance allowed by section 10 of the FOIA.
54. Furthermore, the Trust did not communicate to the complainant, within 20 working days, whether or not it held any manual copies of the email communications falling within the scope of point p) of the request dated 9 April 2017.
55. It is therefore clear to the Commissioner that the Trust has breached section 10(1) of the FOIA in handling these requests.

Section 12 – cost of compliance

56. Section 12(1) of the FOIA allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit to either comply with the request in its entirety, or confirm or deny whether the requested information is held.
57. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake the work to comply with a request. This equates to 24 hours' work for central government departments, and 18 hours' work for all other public authorities, before the cost of compliance would exceed the appropriate limit. When estimating whether a request for information may exceed the cost limit, the authority can consider the time it would take to:
 - a) determine whether it holds the information
 - b) locate the information, or a document which may contain the information
 - c) retrieve the information, or a document which may contain the information, and
 - d) extract the information from a document containing the information.
58. The appropriate limit for the Trust is £450, or the equivalent of 18 hours work.
59. In this case, the Trust has refused to comply with point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017 because it estimates that the cost of complying with these parts of the requests would exceed the appropriate limit.
60. In response to point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017, the Trust has stated that it carried out searches using the following parameters and dates –

"All incidents / All medication incidents / Trust wide / Mandarin B ward – 01/04/2013 to date."

The Trust identified that a total of four incidents were reported, but that none related to *"deaths specifically related to drug access by patients / free access to drugs"*.

61. However, this response only related to incidents from 1 April 2013 to date and as pointed out by the complainant to the Trust in her letter dated 28 October 2017, she had asked for details prior to August 2013 and specifically, suicides and any other deaths related to POD keys.
62. In the Trust's submissions to the Commissioner, it stated that all deaths are reported as catastrophic in line with national reporting guidelines and any additional details would be entered in free text format which is dependent on the user entering the details at the time of the incident. It went on to explain that the specific details or any expansions on the circumstances of the incident would form part of the investigations that would subsequently take place, and it would be reported as part of the paper file. The Trust confirmed that this would include any notes referring to a suspected suicide.
63. As it explained to the complainant in its letter to her dated 17 November 2017, the Trust did a search of all Mandarin B ward incidents across two separate databases and identified 900 reports. The Trust has gone on to explain that of these 900 reports, 174 reports were identified as "catastrophic". The Trust has explained that this impact level would capture any death related reports.
64. In order for the Trust to identify the events of the incident and whether it was drug access related, it would have to manually search each of the 174 investigation reports. The Trust has confirmed that the national reporting process does not have a separate field to report suicides independently. The Trust has stated that its Quality and Safety team reviewed four random files and estimated that it took 8-10 minutes to check for the information requested by checking the full report.
65. The Trust has stated that the Mandarin B ward at Queen's Hospital only opened in 2006/2007, its search was across all reporting systems which were in use from this time, and that it has therefore checked for records prior to August 2013. The Trust has stated that the four incidents identified are for the period 1 September 2013 onwards.
66. The Commissioner has taken into account the scope of the request, how the Trust holds the information over two databases, the volume of records stored, the initial searches it has carried out, and the time the Trust has estimated it would take to carry out further searches, which

the Commissioner considers to be reasonable. In the circumstances, the Commissioner is satisfied that it would take more than 18 hours to comply with point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017, and that the Trust is therefore entitled to rely on the provision under section 12(1) of the FOIA.

67. However, the Commissioner would like to point out that she considers it good practice that a public authority should avoid providing any information found as a result of its searching and claiming section 12(1) for the remainder of the information. It is accepted that this is often done with the intention of being helpful, but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.

Section 16 – advice and assistance

68. Section 16(1) of the FOIA says that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
69. In this case, the Trust did not provide the complainant with advice and assistance as to how her request could be refined in order that it could be complied with without exceeding the cost limit.
70. In its submission to the Commissioner, the Trust has stated that the complainant had been clear in her request that she wanted the number of incidents both “*prior to*” and “*post August 2013*”, and was therefore of the view that any change in the parameters would not meet her requirement. The Trust has gone on to explain that from the nature, history and intentions of the complainant’s correspondence with the Trust, it was clear that the complainant was not looking for a particular incident, but looking for information in general on Mandarin B ward. The Trust has therefore stated that, for the above reasons, it did not ask the complainant if she would like to limit the period in question.
71. Given the scope of the complainant’s request, the Commissioner is of the view that no meaningful advice could have been offered as to ways to refine the request in order to bring it within the cost limit.

Section 17 – refusal of request

72. Section 17(5) of the FOIA provides that a public authority which, in relation to any request for information, is relying on a claim that section 12 applies must, within the time for complying within section 1(1), give the applicant a notice stating that fact.

73. In the circumstances of this case, the Trust did not seek to apply section 12 of the FOIA until 26 October 2017, when the Commissioner had started her investigation into the Trust's handling of the complainant's requests and she had asked it to revisit the requests.
74. By failing to specify the exemption it was relying on to withhold the information requested in point j) of the request dated 9 April 2017 and point 8) of the request dated 20 April 2017 within 20 working days, the Trust has breached section 17(5) of the FOIA.
75. As the refusal notice has now been issued, the Commissioner does not require the Trust to take any steps in relation to this aspect of the complaint.

Section 14 – vexatious and repeat requests

76. 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.
77. 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*".
78. 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.
79. 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).
80. 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.

81. 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 requests¹. 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.
82. 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.
83. 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.
84. In this case, the Trust has relied on section 14(1) of the FOIA to withhold the information requested in points k), n), o), p) of the request dated 9 April 2017 and points 5), 6) and 7) of the request dated 20 April 2017.

The Trust's representation

85. In the Trust's submission to the Commissioner, it has stated that it reviewed the entirety of the case in the context of section 14 of the FOIA to establish whether it should or could be considered "vexatious" as defined in the FOIA and guidance.
86. The Trust has maintained that the effort and resources to respond to the complainant's repeated requests for information on drug access and POD key access was unjustified, seeing as these matters were extensively

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

addressed during an Employment Tribunal hearing. The Trust has stated that all evidence submitted by the Trust for the Employment Tribunal hearing was duly shared with the Court and the complainant's relative. The Trust has confirmed that the evidence shared was in excess of 600 pages. The Trust has stated that to extract this information again in response to the complainant's latest requests, would add a significant amount of burden on staff to go through these papers and identify the information again.

87. The Trust has stated that further consideration was also given to the decision summary in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).

88. The Trust has identified the following similarities:

- The unnecessary burden on the Trust's resources in dealing with matters that have already been investigated through a formal and legal process.
- The motive of the repeated requests. The Trust has stated that the purpose of the FOI requests is very clearly for personal reasons i.e. to potentially reopen a whistleblowing hearing.
- The information sought through the FOIA is for personal reasons and not for the interest of the public. The Trust has stated that this is an abuse of the FOI process. The Trust has stated that the complainant made clear the reasons behind the requests in her letter to the Trust dated 7 July 2017.

89. The Trust has confirmed that it has maintained the principle of requests being applicant and motive blind when dealing with the complainant's correspondence. However, the Trust is of the view that there is clearly an unreasonable persistence by the complainant in attempting to reopen an issue which it says has already been comprehensively addressed through a Court of Law. The Trust feels that the complainant is refusing to accept the decision of the Employment Tribunal, bearing in mind that the matter was also refused at the Employment Appeals Tribunal. The Trust has stated that the complainant was sending multiple letters to various departments with the same questions.

Complainant's representations

90. The complainant has not provided any submissions specifically countering the application of section 14(1) to her request. However, the Commissioner is aware of some of the background to her requests for information. She has considered this with regard to assessing the purpose and value of the request.

91. The Commissioner is aware that the requests relate, in the main, to uncontrolled access to drugs at the Trust and at the particular ward at the Trust that the complainant's relative previously worked on. The Commissioner understands that the Care Quality Commission (CQC) did carry out an inspection of the Trust. However, the Trust has confirmed that this was not as a direct result of the whistleblowing incident. The Commissioner notes that the outcome of the inspections have been published on CQC's website and recommendations have been made.
92. The Commissioner also notes that the issue was also considered in a Court of Law (an Employment Tribunal), and a judgement made in favour of the Trust.
93. In the complainant's correspondence to the Commissioner she has referred to individuals not being able to defend themselves over whistleblowing if information is withheld and that the information was withheld by the Trust from the Tribunal.
94. In the complainant's internal review request dated 7 July 2017 she has stated that she "*required this information for the whistle blowing tribunal hearing*".
95. The Commissioner notes that the complainant did appear to be attempting to re-open the issue of uncontrolled access to drugs at the time of the requests, and will therefore consider these factors when considering the purpose and value in the requests.

The Commissioner's view

96. 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.
97. 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.
98. 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.

99. 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 73-75 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. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
100. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
101. The Commissioner accepts that the request has purpose and value to the complainant, as she has strong feelings that her relative has been unfairly treated in relation to the protected disclosures relating to uncontrolled access to drugs. The Commissioner recognises that these issues may have had a direct impact on the complainant and her relative, and the disclosure may therefore allow the complainant to resolve these issues. However, these are very personal issues and the Commissioner considers that there are appropriate complaint or appeal process available for the complainant and her relative, such as from the relevant public body or court. In situations where an individual disputes the actions of a public authority, the Commissioner recognises that the appropriate complaint or appeal process should be followed, and that the purpose of the rights provided by the FOIA is not to replace such processes, or else be used to express dissatisfaction with the outcome of them.
102. The Commissioner recognises that the issue of uncontrolled access to drugs is likely to be a matter of wider public interest. However, she understands that the complainant's concerns have been considered by the Trust, the CQC and a Court of Law, and she was advised that the matter would not be investigated further in August 2014. In April 2017, the Trust classified both the complainant and their relative as vexatious and unreasonably persistent complainants, in accordance with its complaints policy, and stated that it would not be responding to any

further communications of this nature from the complainant or their relative.

103. Having considered this context, and the specific information sought by the requests, the Commissioner believes that it is reasonable to conclude that the purpose of the request is to pursue correspondence with the Trust about a matter that the Trust considers to have been fully investigated and concluded.
104. The Commissioner's role in considering the application of section 14 of the FOIA to this request does not require her to carry out a public interest test as such, but rather to weigh the purpose and value of the request against the burden on the authority in complying with it.
105. The Commissioner recognises that the complainant has her reasons for requesting the information. She is clearly not satisfied with how her relative was treated by the Trust in relation to the protected disclosures and uncontrolled access to drugs. However, disclosure of the requested information would likely do nothing to resolve that dispute. In view of this, the Commissioner considers that the request for information has no wider value or purpose beyond the complainant's pursuit of her personal grievance against the Trust.
106. All of this leads the Commissioner to conclude that the impact of points k), n), o), p) of the request dated 9 April 2017 and points 5), 6) and 7) of the request dated 20 April 2017 on the Trust is disproportionate and unjustified by any serious purpose or value. The Commissioner is satisfied that these parts of the requests are vexatious and section 14(1) has been correctly applied.

Other matters

107. The Commissioner notes that the Trust's response to the internal review exceeded 40 working days. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working

days. The Commissioner therefore recommends that the Trust review the Section 45 code of practice².

² <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Right of appeal

108. 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

109. 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.

110. 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