

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 August 2019

**Public Authority:** Dr J Williamson, Dr S Mckimmie, Dr F Laing, Dr J Miles, Dr M Oliver, Dr G Dingle, Dr K Dingle, Dr U Desai, Dr O Kadir, Dr R Morgan, Dr G Russell – partners at Garstang Medical Practice

**Address:** Kepple Lane  
Garstang  
Preston PR3 1PB

### **Decision (including any steps ordered)**

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1. The complainant has requested particular contracts from Garstang Medical Practice ('the Practice'). Having initially provided a response to the complainant, the Practice is now relying on section 14(1) of the FOIA (vexatious request) to refuse to comply with the request.
2. The Commissioner's decision is as follows:
  - The Practice can rely on section 14(1) of the FOIA to refuse to comply with the request.
  - The Practice breached section 17(5) as it did not issue an appropriate refusal notice within the required timescale.
3. The Commissioner does not require the Practice to take any remedial steps.
4. The Commissioner notes that Garstang Medical Practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to

provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

## Request and response

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5. On 18 October 2018 the complainant wrote to the Practice and requested information in the following terms:  
  
*"...under the Freedom of Information Act 2000 we require digital copies of the General Medical Services (GMS) Contracts for Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy from 2014 to 2018. That is, the contract between Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy and NHS England for delivering Primary care services to local community."*
6. The Practice wrote to the complainant on 3 January 2019. It advised the complainant that all the information it holds, and that which had been requested, had been sent to him and that it does not hold any other current information about him. It is not clear whether this was a response to the 18 October 2018 request.
7. The complainant requested an internal review on 20 January 2019. The Practice wrote to him on 21 January 2019. This correspondence concerned its wider relationship with the complainant; it did not specifically address his request of 18 October 2018.
8. As a result of the Commissioner's investigation the Practice reconsidered and confirmed its position. It is now relying on section 14(1) to refuse to comply with the request and the Commissioner understands that the Practice communicated its new position to the complainant on 26 July 2019.

## Scope of the case

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9. The complainant contacted the Commissioner on 18 January 2019 to complain about the way his request for information had been handled.
10. The Commissioner's investigation has focussed on whether the Practice can rely on section 14(1) of the FOIA to refuse to comply with the complainant's request. She has also considered whether the Practice's refusal of the request satisfied the requirement under section 17(5).

## Reasons for decision

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### Section 14 – vexatious and repeat requests

11. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
  - Abusive or aggressive language
  - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance
13. 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.
14. The Commissioner's guidance goes on to suggest 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.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
16. Following the Practice's application of section 14(1) to the request, the complainant raised a number of public interest arguments, and other arguments, with the Practice and the Commissioner to support his position that the request is not vexatious. Section 14(1) is not subject to the public interest test although the value and purpose of the request is something that the Commissioner will take into account. The Commissioner has considered the complainant's other arguments.
17. In its submission to the Commissioner, the Practice has explained that it has been communicating with the complainant on matters associated

with the current request since 2015. It has provided the Commissioner with more details on the complainant's central concern, which she does not intend to reproduce in this notice. The Practice has also provided the Commissioner with copies of a selection of its correspondence with the complainant, which she has reviewed.

18. The Practice has noted the nature and volume of correspondence received from the complainant, its responses and interactions with the complainant. The Practice first appears to have received correspondence from the complainant about the particular matter that was a concern to him on 10 June 2015. The complainant submitted a service complaint about the Practice in January 2016; he was invited to a meeting at the Practice in October 2016 and the complainant submitted a subject access request to the Practice in December 2016. The Practice provided a response to this on 20 January 2017.
19. Correspondence and interaction with the complainant continued into 2017 and the Practice notes that between 1 July 2015 and 20 April 2017 the complainant sent 26 emails to different members of the Practice on the matter that is of concern to him.
20. The Practice has told the Commissioner that by this point North Lancashire Clinical Commissioning Group (CCG) had engaged solicitors for advice as it was felt that the continued communications from the complainant had become a considerable burden to the CCG and the Practice. The firm of solicitors wrote to the complainant in April 2017.
21. In March 2018 the complainant submitted a second subject access request to the Practice, to which the Practice responded. The Practice says that it received numerous emails from the complainant from June 2018, which led to the Practice suggesting another meeting with him. In an email to the Practice the complainant set out terms for the meeting that the Practice did not consider to be acceptable. At this point the complainant contacted the Care Quality Commission (CQC).
22. The Practice discussed the situation with the CQC in August and September 2018, and in December 2018. The CQC had advised that it considered that the Practice was managing the situation satisfactorily.
23. The Practice says the complainant had lengthy clinical consultations with a named GP in July, August, September and October 2018 (and in November 2018 and January 2019). It says that in these consultations the complainant continued to try to raise wider concerns that it had previously dealt with and which had been concluded.

24. Following advice from NHS England, the complainant was removed from the Practice's list in January 2019 but the Practice has advised that he has continued to send emails to the Practice.
25. The Practice has told the Commissioner that corresponding with the complainant has put a significant strain on its time and resources. It says the complainant has submitted long and frequent requests and that the request of 18 October 2018 contributes to that aggregated burden. The Practice felt at that time, and still feels, that given its history and experience of dealing with the complainant's requests, he will not be satisfied with any response he receives. It says that in the past the complainant has continually submitted numerous follow up enquiries no matter what information or explanation the Practice has provided; as such, the Practice does not believe that that would be the end of the matter if it was to comply with the 18 October 2018 request.
26. The Practice says it is relying on section 14(1) now as it considers it is the only way to bring what it describes as a protracted and distressing matter to a close. The complainant's repeated communications have caused considerable irritation and distress, the Practice says, and have taken up a disproportionate amount of time for those involved in this matter over the last four years.
27. In correspondence to the Practice and the Commissioner, the complainant has argued that he needs the requested information in relation to being removed from the Practice's patient list. The Commissioner must consider the situation at the time of the request; this was in October 2018 and the complainant was not removed from the patient list until January 2019. She has therefore not taken account of this argument. The complainant has also argued that the requested information has not been requested previously. Section 14(2) of the FOIA concerns repeat requests; the Practice's position in this case is that the request is vexatious under section 14(1).
28. In his correspondence to the Commissioner the complainant has provided personal reasons why he needs this information. He also argues that British Medical Association and CQC advise that not prescribing medicines is against the General Medical Services contract, which is why he has requested particular contracts. Finally, the complainant argues that not complying with his request is counter to various NHS policies and regulations.
29. From the situation as described by the Practice, and from her review of the correspondence with which she has been provided between the Practice and the complainant, up to the point of the current request, it appears to the Commissioner that from his reasonable concern in June 2015 about a particular matter, the complainant's correspondence to the

Practice had, by the time of the request, become something of a campaign against the Practice. The Commissioner agrees with the Practice that the complainant gives the appearance of using the FOIA legislation to vent his frustration over a particular decision or to harass and annoy the Practice, rather than to obtain information.

30. The Commissioner has noted the complainant's arguments. But from the information provided to her the Commissioner considers that, on the whole, the Practice has handled the complainant's enquiries and correspondence satisfactorily. It appears to the Commissioner that the Practice dealt with the complainant's original concern in February 2017. Correspondence to the Practice from the complainant over the following 18 months was frequent, overlapping and often about the same issue (which, as above, has been comprehensively addressed). It has also included unsubstantiated accusations against the Practice such as "*serious breaches of contracts*".
31. At the time of the request the complainant had been corresponding with the Practice for over three years on substantially the same matter; a matter that had been comprehensively dealt with half way through that period. Having therefore considered all the circumstances the Commissioner has decided that the Practice can rely on the provision at section 14(1) of the FOIA with regard to the request of 18 October 2018.
32. She considers that by this point, the Practice was right to draw a line and refuse to comply with the request. With regard to the complainant's original, central concern, which concerned a prescribing matter, the Practice did not implement that policy in isolation but was following a recommendation by Lancashire North Clinical Commissioning Group. The complainant appears to be aware of bodies he might approach regarding his wider concerns, or any service complaint about the Practice. By the time of the current request, his correspondence to the Practice does not appear to have had a useful purpose and this request was simply continuing a burden to the Practice that was disproportionate to the request's value.
33. The Commissioner has found that section 14(1) applies in this case. She reminds the Practice that it cannot rely on this provision to refuse to respond to *any* future requests for information it may receive from the complainant. The Practice should consider each request it may receive from the complainant on an individual basis. It may be appropriate to rely on section 14(1) in the case of a request for similar information, or associated with similar matters; it may be inappropriate if a request is for substantially new or different information. The Practice should consider the circumstances of each request for information it may receive.

### **Section 17 – refusal of request**

34. Section 17(5) of the FOIA says that a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
35. The time for complying with section 1(1) is 20 working days following the date of receipt of a request. The complainant submitted his request on 18 October 2018. The Practice does not appear to have provided any response until 3 January 2019 and did not provide a clear, section 14 refusal notice until 26 July 2019. The Practice therefore breached section 17(5) on this occasion.

## **Right of appeal**

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36. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

37. 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.
38. 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**  
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