

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: Sheffield Teaching Hospitals NHS Foundation Trust

Address: Weston Park Hospital
Whitham Road
Sheffield
South Yorkshire
S10 2SJ

Decision (including any steps ordered)

1. The complainant requested information concerned with medical treatment that her late father received from the public authority.
2. The Commissioner's decision is that Sheffield Teaching Hospitals NHS Foundation Trust correctly relied on section 14(1) as a basis for not complying with the complainant's request for information.

Request and response

3. On 20 August 2011 the complainant wrote to Sheffield Teaching Hospitals NHS Foundation Trust (the Trust) and requested information in the following terms:
 - Was there any morphine syringe driver change administered on the 10 January 2006 (to my Father)?
 - If so at what precise time (if any) did a morphine syringe driver change take place (on 10 January 2006 with regards to my Father)?
 - Identification (by name) of the two signatures who signed on 10 January 2006 the admitted altered entry (in the controlled drug book)?

- Identification of the grades of the 2 signatures who have signed the admitted altered entry on the 10th January 2006 (in the controlled drug book)?
4. On 25 August 2011, the Trust informed the complainant that it was refusing her request as it considered it vexatious.
 5. Following an internal review, the Trust wrote to the complainant on 24 November 2011. It stated that the review upheld the original decision.

Scope of the case

6. On 17 October 2011, the complainant contacted the Commissioner to complain about the Trust's handling of her request for information.
7. As part of his investigation the Commissioner wrote to the Trust on 10 February 2012. He asked that it provided him with full details that supported its reliance on section 14 of FOIA not to comply with the request for information.
8. The Trust provided its reply to the Commissioner's queries on 28 February 2012. The Commissioner provided the complainant with a précis of the more salient points cited by the Trust and invited her to comment. This the complainant did by way of correspondence on or around 10 April 2012.

Reasons for decision

9. Section 14(1) of the Act states as follows:-
 - Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a public authority could lawfully refuse to comply with the request on the grounds that it is vexatious:
 - 1) Whether compliance would create a significant burden in terms of expense and distraction
 - 2) Whether the request is designed to cause disruption or annoyance

- 3) Whether the request has the effect of harassing the public authority or its staff
 - 4) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - 5) Whether the request has any serious purpose or value
11. As stated above, the Commissioner allowed both parties to lay out their arguments and considerations as to whether the request was a vexatious one for the purposes of FOIA. The incident with which this request is concerned about happened in 2006 and has resulted in interaction between the complainant and the Trust that has continued, with little respite, since then. There is therefore a considerable amount of history between the parties. The Commissioner will only consider and cite that history where it is, or appears to be, relevant to determining the applicability of section 14 to the information request.

Factual Findings

12. The complainant's father passed away on the Trust's Palliative Care Ward on 11 January 2006.
13. The treatment he did or did not receive has been the subject of investigations by the Trust itself, the Health Care Commission and the Parliamentary and Health Service Ombudsman. The Trust says that it has supplied all the medical records in response to a request made under FOIA on 31 December 2009 although the complainant disputes the completeness of the Trust's disclosure. There have been two lengthy meetings (26 January and 21 June 2010) between the complainant and the Trust regarding the treatment of her father. The Commissioner also understands that the complainant made a complaint to the police, concerning the treatment her father received, but it did not result in criminal proceedings against the Trust or its staff.

Whether compliance would create a significant burden in terms of expense and distraction

14. The Trust informed the Commissioner that complying with the request would not create a significant burden in terms of expense and distraction.

Whether the request has the effect of harassing the public authority or its staff

15. The Trust maintains that the request appears innocuous in isolation. However, when placed in the context of the complainant's previous behaviour its effect was to harass its staff.

16. The complainant seeks information as to whether two particular members of staff who signed her father's medical records ("the two signatures at the side of the altered to 20.20 - 10mgs entry") were members of appropriate professional bodies.
17. The complainant's position is that the two signatures do not correspond to signatures on the Record of Multidisciplinary Staff Signatures and the Record of Nurses Signatures. These two records are meant to be filled by medical staff who make any entry on the patient record and require the name, role/grade and signature of those staff.
18. The Commissioner discussed the complainant's assertions with the Trust. The Trust explained that the complainant was well aware why the signatures did not appear in the two records as she had been informed of this in a meeting between the Trust and the complainant dated Monday 21 June 2010. The Trust provided a very extensive minute of that meeting and directed the Commissioner to relevant pages.
19. The said minute indicates that there was a substantial discussion between the Trust and the complainant (and those that accompanied her) regarding why medical personnel who had signed her late father's medical record were not recorded on the Record of Multidisciplinary Staff Signatures or the Record of Nurses Signatures along with their professional status. There was also discussion about the grading and training undertaken by staff attending to her father.
20. The Commissioner considers that the information request constitutes a revisiting of an issue previously discussed and investigated. This can reasonably be seen as an unwarranted and unnecessary imposition on the Trust and as such is evidence that the request is one that harasses it and/or its staff.
21. The Trust says that the complainant had previously taken information from responses to her requests for information and used it to populate a website in a way that was accusatory, vitriolic and libellous. The Trust explained that the website named Trust members of staff and "interpreted" information supplied by the Trust, particularly in the Palliative Care Unit, in a manner that was un-contextualised and, in some cases, untrue. This caused considerable distress to the staff of the Palliative Care Unit – so much so that in early 2011 the Nursing Medical Council took legal action and forced the closure of the website citing its derogatory and libellous statements regarding its members.
22. The Commissioner has not been able to view the web pages that purportedly caused the distress to employees of the Trust. He has however viewed a letter from solicitors acting for the Nursing Medical Council. The letter alleges that the website has caused distress to and

been libellous about named caseworkers (i.e. not staff of the Trust) employed by the Nursing Medical Council. It seems this letter caused the web provider to close the website down. Having regard to the evidence and the assertions of the Trust, the Commissioner, on the balance of probabilities, is of the view that names and information about employees of the Trust were used in such a way on the website to amount to harassment of employees of the Trust.

23. It is in the context of this behaviour the Commissioner further accepts that this information request would have the effect of harassing some of the relevant employees of the Trust by reminding them of the complainant's previous inappropriate use of information acquired from the Trust.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

24. The Trust says that it has received 17 separate information requests from the complainant. Additionally, it has received nine from her husband and three from an elected official on her behalf.
25. The Commissioner's analysis shows that all the requests made directly by the complainant, including this one, relate (to a greater or lesser extent) to information reviewed and considered as part of both the Trust's own internal complaints procedure and those of external bodies considering the treatment of her late father. These complaints processes included a full investigation by the Trust, the involvement of the Health Care Commission and the Parliamentary and Health Service Ombudsman. The complainant, as she was entitled to do, triggered these investigations.
26. The Commissioner considers that the complainant's multiple requests for information, connected to a singular incident, is persuasive evidence that she has acted in a vexatious manner. He is satisfied that it points to a person whose behaviour appears obsessive, particularly given that they are connected to one, albeit distressing and emotional, incident. The Commissioner, in making this finding, believes that it is not necessary to reach a view as to whether the requests made by the complainant's husband or those by her elected representative should be aggregated with those made by the complainant.
27. The Commissioner further feels that the issue laid out in paragraph 20 above is also pertinent to this sub-heading. This is because seeking to re-open a matter that has already formed part of the subject matter of lengthy discourse between the complainant and the Trust is evidence of behaviour that is obsessive and repetitive.

Whether the request has any serious purpose or value

28. The information request itself, given it relates to the care received by a terminally ill patient is, the Commissioner finds, one that has a manifestly apparent purpose or value. However, this factor in favour of the request not being vexatious is weakened because of the fact that the original circumstances that give rise to the request have been the subject of multiple requests for information and independent inquiries.

Conclusion

29. After carefully considering relevant matters put forward by the parties the Commissioner's decision is that the request is a vexatious one.
30. The request for information is a simple one yet an important one given that it is concerned with the provision of health care to a terminally ill patient in the care of the National Health Service. However, the Commissioner's view is that the request is one that is vexatious given the complainant's cumulative interactions with the Trust.
31. In approaching the application of section 14(1), the Commissioner has regard to the Tribunal's decision in *Hossack v Information Commissioner* (EA/2007/0024) that the consequences of deeming a request vexatious are not as serious as a finding of vexatious conduct in other circumstances. The Tribunal considers that the threshold for vexatious requests is therefore not to be set too high. However, the Commissioner appreciates that this is counter-balanced by the views of a differently constituted Tribunal¹ that section 14(1) is not to be used to unfairly constrain the legitimate rights of individuals to access information.
32. The Commissioner notes that the complainant's concerns or complaints about the treatment her late father from the Trust has been investigated and adjudicated upon by the Trust itself, the Health Care Commission and the Parliamentary and Health Service Ombudsman. The Trust and the complainant have also told the Commissioner that the complainant's complaints to the police did not lead to the bringing of criminal charges. Additionally, the particular issue of which medical staff provided care at a particular time was discussed at length in the meeting described at paragraph 19 above.

¹ *Rigby v Information Commissioner* (EA/2009/0103)

33. As the Commissioner has commented previously, the death of a close family member will always be traumatic and will often lead to questions about the quality of health care offered to the individual. It is reasonable that a member of the family should want to know more about the surrounding circumstances, and, where applicable, to hold an authority to account. However, there must be a limit to pursuing such complaints by the use of FOIA particularly where bodies empowered to investigate and/or adjudicate upon those complaints have done so.
34. The Commissioner has read previous exchanges of correspondence between the parties. He notes that the Trust's reply to a request for information or a query from the complainant often causes the complainant to pursue a further request for information or query. Such a course of conduct from the complainant indicates behaviour that is obsessive or harasses the Trust
35. The complainant's erstwhile persistence in pursuing her grievance may have been admirable. Unfortunately, it has slid in harassing and obsessive behaviour. The information request, that is the subject matter of this decision notice, is a further example of the complaint's obsessive/harassing behaviour and it returns to matters already adjudicated upon. These factors are sufficient to render the request as vexatious.

Right of appeal

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Alexander Ganotis
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