

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 March 2016

**Public Authority:** Nottinghamshire Healthcare NHS Trust  
**Address:** The Resource  
Duncan Macmillan House  
Porchester Road  
Nottingham  
NG3 6AA

#### Decision (including any steps ordered)

---

1. The complainant made a request to Nottinghamshire Healthcare NHS Trust (the Trust) for information relating to Arnold Lodge. The Trust refused to comply with the request under section 14(1) FOIA.
2. The Commissioner's decision is that the Trust has correctly applied section 14(1) FOIA in this case and was not therefore obliged to comply with the request.
3. The Commissioner requires no steps to be taken.

#### Request and response

---

4. On 21 July 2015 the complainant requested information of the following description:

"You State

Arnold Lodge is operated by this Trust. It is not a separate /legal entity.

This, I find hard to believe. Arnold Lodge has remained under the same name for years. All that has changed is that this hospital has been transferred to different Trust's - or certain Trusts have renamed themselves. I do not accept your claim that Arnold Lodge is not a separate legal entity - please provide clear, legal, proof that

this is the case. In fact, please consider that a Freedom of Information request – I want all legal documentation related to the legal status of Arnold Lodge.”

5. On 14 August 2015 the Trust responded. It refused to comply with the request under section 14(1) FOIA.

### **Scope of the case**

---

6. The complainant contacted the Commissioner on 15 September 2015 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the Trust correctly applied section 14(1) FOIA in this case.

### **Reasons for decision**

---

8. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
9. The Commissioner's guidance<sup>1</sup> on the application of section 14(1) FOIA, refers to an Upper Tribunal decision<sup>2</sup> which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
10. The guidance suggests that 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. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

---

<sup>1</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>2</sup> *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

11. The Trust explained that it has been in correspondence with the complainant, regarding the death of his father at Arnold Lodge, since September 2013. In summary, on 11 September 2013, the Trust received an FOI request from the complainant for disclosure of his deceased's father's records at Arnold Lodge. On 31 October 2013, the Trust declined to disclose this information on the basis of section 41 of the FOIA. The complainant complained to the ICO about this decision. In Decision Notice FS50535997, dated 2 July 2014, the ICO upheld the Trust's decision to refuse to disclose the records. The complainant appealed against the ICO's decision to the First Tier Tribunal ("FTT"). On 3 February 2015, the Tribunal allowed the complainant's appeal and ordered that the records be disclosed (Case No. EA/2014/0165).
12. It said that during the earlier request and appeal and subsequently, the complainant's attitude towards the Trust has usually been hostile. It explained that the language of his correspondence is often aggressive, hostile and inflammatory. The Trust said that it is not to say that the complainant is incapable of dealing with the Trust in an appropriate manner. It confirmed that at times he has spoken with the Trust's Company Secretary in a perfectly pleasant and acceptable way. However more often than not, his correspondence (as in the relevant FOIA request itself) is written using language and a tone that is entirely unacceptable and inappropriate and this has been the case from the outset of his dealings with the Trust. It provided the Commissioner with examples of the aggressive, hostile and inflammatory tone taken by the complainant in his dealings with the Trust.
13. As explained above, the complainant appealed to the Tribunal in relation to the Trust's application of section 41 to his earlier request. The Trust said that while granting his appeal on the section 41 point, the Tribunal did comment as follows about the complainant's approach:

"Some of the language adopted by the Appellant was extreme and apparently based on suspicions about the death, which were not supported by evidence submitted to the Information Commissioner when he carried out his investigation or to us in the course of this appeal. Similar language and unsupported allegations of wrongdoing appeared in subsequent written submissions and in correspondence included in the bundle of documents made available to us. The Appellant did his case no favours by adopting irrational and inflammatory language, although we should add that he presented his case during the hearing before us on a more rational basis and in entirely measured terms."
14. Subsequent to the above appeal, on 24 April 2015, the complainant wrote to the Tribunal and the Trust alleging dishonesty on the part of the Trust and an employee of the legal firm representing the Trust. The

issue relates to whether the Trust would bear legal liability for events that happened at Arnold Lodge in 1989. The Trust had previously informed the complainant that this would not necessarily be the case, even though it now operates Arnold Lodge it did not in 1989. He was told that liability would entirely depend on the legal transfer arrangements between now defunct NHS bodies at their successors and that the Trust did not accept that it would hold liability. It said that the complainant had apparently made an FOI request to the Leicestershire Partnership NHS Trust, which had replied stating that in its view, liability for events at Arnold Lodge in 1989 would lie with the Trust.

15. The Trust explained that it decided to respond to the complainant's email of 24 April 2015, even though the substantive proceedings had concluded, purely because of the gravity of the suggestion that its legal advisors and/or the Trust itself had sought to mislead the Tribunal. It said that the complainant's response was typical of the tone in which he refers to and addresses the Trust. He does not address the straightforward points made by the Trust but simply dismisses them. He accuses the Trust and its legal representatives of deliberately seeking to mislead him for over a year. He refers to the Trust as "a self-serving 'authority' that is devoid of moral or ethical principles"; states that it is "morally corrupt"; and "acts only to protect its killer doctors and nurses."
16. The Trust said that since the earlier request relating to Arnold Lodge which went to the First Tier Tribunal, in 2015 the complainant made 6 requests relating to Arnold Lodge, including the request which is the subject matter of this Notice.
17. In addition to responding to the requests, the Trust's Chief Executive did write to the complainant to ask him to alter the tone of the language used when corresponding with it. The Trust explained that this is what led to the FOIA request, which is the subject of this Notice, being made.
18. It said that a number of Trust staff who work at Arnold Lodge were unnerved by his correspondence. It explained that the statement by the complainant that "there will be an accounting" contained in the request email may have purely been a way of phrasing his intention to pursue compensation and all methods of complaint. However, it said it is easy to view it as an implicit threat. The Trust was not prepared to assume that this was not a threat and contacted Nottinghamshire police to make a complaint.
19. The Trust suggested to the police that the complainant may have committed offences under section 127 of the Communications Act 2003 (sending a menacing communication using a public electronic

communications network); under section 1 of the Malicious Communications Act 1988 (sending communications with intent to cause distress or anxiety); or under the Protection from Harassment Act 1998.

20. The Trust did not wish matters to be escalated unnecessarily. Its concern was simply to reduce the chances of further hostility or any risk of violence towards its staff, rather than to pursue a prosecution. It invited the police to consider whether providing the complainant with a spoken or written warning would be sufficient in the first instance. Nottinghamshire Police sent the complainant an email dated 12 August 2015. It instructed that the complainant should not continue to use offensive language or graphics which caused staff to feel threatened and distressed. It also confirmed that the complaint the complainant had lodged about the death of his father at Arnold Lodge had been completed. The Trust provided the Commissioner with a copy of this letter. It confirmed that this appears to have had the desired effect as whilst the complainant has recently sent further correspondence to the Trust, there have been no further instances of offensive correspondence.
21. It is the Trust's contention that the complainant's request relevant to this Notice is patently vexatious. It said that the request was made in response to a letter from the Trust's Chief Executive in which the complainant was politely asked to alter the tone of his communications with the Trust. It said that the Chief Executive's letter was firm but entirely polite and reasonable (a copy of this was provided to the Commissioner). It did not cut off the complainant's ability to correspond with the Trust on FOIA matters (although reminding him of the need to correspond in reasonable terms).
22. It argued that the request email is, on any reading, grossly offensive. The complainant appears to take delight in being offensive and sending a defiant response to the Trust's Chief Executive. He states "if I decide to write letters and emails and send the [sic] to every Tom, Dick and Harry under the sun, and also include graphics with a bloodied palm (I have included a couple of images by way of illustration) —reinforcing the fact that Arnold Lodge and its staff contributed to the death of a patient under their care —I will, regardless of how you or others feel about it." He characterises this as a "protest at the wall of silence I have consistently faced".
23. It reiterated that the complainant has not faced "a wall of silence". The Trust has responded to numerous queries he has made; and when it declined to provide him with information requested previously (a decision which was supported by the ICO) it fully explained its rationale to him.

24. However, even had the Trust simply refused to engage with the complainant, that would still not justify sending this email.
25. The Trust argued that the shocking and gratuitous nature of the red pictures of bloodied handprint included in the request, and the words "Have you got blood on your hands", styled as if written in blood which is running down the screen cannot in any way, in any context, be acceptable in the course of email communication, no matter how personal and upsetting the subject matter of that communication may be. It therefore argued that the request comfortably meets the definition of "patently vexatious".
26. The Commissioner has viewed the FOIA request pertinent to this case and the submissions presented by the Trust in support of its application of section 14(1) FOIA. The Commissioner considers that the tone of language used and the offensive icons would be intimidating to staff dealing with this correspondence. The Commissioner considers that the Trust took the complainant's correspondence to be sufficiently threatening to report the request to the Police. The Police also wrote to the complainant to provide him with a warning relating to this. The Commissioner considers that this request was therefore patently vexatious due to the tone of language and icons used.

## **Right of appeal**

---

27. 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)

28. 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.
29. 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** .....

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**