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

### **Decision notice**

**Date:** 9 July 2018

**Public Authority:** NHS Commissioning Board (NHS England)

**Address:** 4N22 Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

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

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1. The complainant has requested information relating to the proposed 'seven day service' in the NHS.
2. The Commissioner's decision is that NHS England (NHSE) has correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Background**

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4. In 2015 the Secretary of State for Health, Jeremy Hunt, claimed that around 6,000 patients a year died because of the level of NHS staffing at weekends, prior to the imposition of a new contract for junior doctors.

This figure was based on the 'Freemantle' research paper. In brief this research found that there was an increased risk of death associated with patients being admitted to hospital at weekends. Concerns were raised about the use of the 6,000 figure in the speech which was given several weeks before the 2015 research was peer reviewed and published. The Commissioner understands that the figures used by the Secretary of State in that speech originated from (but are not necessarily contained

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in) an earlier research paper (Freemantle 2012)<sup>1</sup>. The independence of Freemantle 2015 was debated in the public domain.

5. It was later reported that this figure was inaccurate and that the analysis was due to be published in the British Medical Journal (BMJ). It was subsequently published in the BMJ in September 2015.

**Request and response**

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6. On 12 October 2017, the complainant wrote to NHSE and requested information in the following terms:

*"May I please:*

1. *See the email correspondence you hold relating to this 7DS briefing for the SoS.*
2. *See any slide packs created for this briefing in full.*
3. *See any meeting minutes relating to preparing for this briefing or the meeting minutes of the 7DS briefing of the SoS."*

And

*"I would like to make the following request as regards the attached emails: As regards an email sent by [redacted] on page 21 on June 11th 2015 in which it states "This is the latest pack".*

1. *Please may I make a request to see this 'pack'.*

*On page 34 an email from Deloitte states "this should be 6700...."*

2. *May I see the Deloitte slidepack which mentions the 6700 figure - obviously this may be the same pack as in the first request above, in which case this amounts to just one request."*
7. NHSE responded on 9 November 2017 refusing to provide the requested information and cited section 14(1) of the FOIA. Following an internal review NHSE wrote to the complainant on 22 November 2017 and upheld its previous position.

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<sup>1</sup> EA/2016/ 0140

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### Scope of the case

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8. The complainant contacted the Commissioner on 23 November 2017 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of the case to be to determine if NHSE has correctly applied section 14(1) to the request.

### Reasons for decision

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10. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
11. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
13. 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).
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>2</sup>. In brief these consist of, in

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

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no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

15. 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.
16. The Commissioner's guidance suggests 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.

**NHSE's position**

17. It is the position of NHSE that this request is part of a series of very similar requests submitted by the complainant in conjunction with another individual totalling 59 requests altogether.
18. NHSE stated that the complainant has submitted a great many FOI requests over the previous two years which are all related to the provision of a 'seven day NHS'. It provided the Commissioner with a spreadsheet showing the requests the complainant has made since November 2015 on, or related to that subject. NHSE further stated that it has complied with all these requests as far as possible.
19. The spreadsheet further evidenced that of 39 related requests made to NHSE, substantive responses were provided in 18 cases. The remaining cases were responded to as follows:  
  
1 x Clarification requested; 9 x Information not held; 7 x Refused on the grounds of section 12(1) (costs); 1 x Refused on the grounds of section 14(2); 2 x Refused on the grounds of section 14(1) in two cases (under consideration here); 1 x Information withheld under sections 36 and 43.
20. NHSE further stated that the complainant has requested five internal reviews, sent in follow up enquiries in two cases, and approached the ICO on four occasions (including the requests subject in this decision notice).
21. It therefore considered it had provided the applicant with information as far as possible. Additionally, the complainant has been offered the

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opportunity to meet the relevant policy team and discuss his concerns, but has not taken up that opportunity.

22. NHSE stated that the applicant's requests frequently overlap and he requests information which is very similar or identical to information which has been previously requested. NHSE provided an example where the complainant made 17 separate requests for copies of Sir Bruce Keogh's correspondence with various individuals, and seven requests for information in respect of a British Medical Journal article co-authored by Sir Bruce (some requests fall into both categories which ask for correspondence from or to Sir Bruce (and others) regarding the BMJ article).
23. NHSE considered it is arguable that the latest very broad requests are designed to 'mop up' any information not caught by previous requests or which has previously been withheld in reliance on an exemption. This, and the overlapping nature of previous requests made by the applicant, further supports its position that the current request has no inherent purpose or value.
24. In addition, NHSE considered that the complainant was working in concert with another individual. Although made by different people, NHSE considered it to be apparent that they are working in concert in this matter. It considers that each applicant's requests reflect one another, both in terms of date submitted, and information requested. It provided the Commissioner with some examples from November 2015 and February 2016.
25. It is clear to the Commissioner that the complainant and the other individual referred to are known to each other. However, this in itself does not mean that they are acting in concert with one another.
26. When compiling its response to the Commissioner, NHSE stated it had asked key members of staff to estimate how much time has been spent on these requests.
27. In 2015 when NHSE first started to receive requests from the complainant and the other individual, it estimated that at least two full days' work per week was being dedicated by multiple members of staff at various levels across the organisation in order to respond to the requests. This amount of resource continued to be required throughout 2015, as NHSE located and considered the requested information for the first time. Between 2016 and 2017, the requests became more targeted, and some information had already been located. However, a significant amount of time continued to be required, and NHSE estimate that this equated to between one and two days of staff time per week throughout 2016 and 2017.

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28. NHSE explained that these are very conservative estimates, but it considers that they demonstrate the resources which it has dedicated to dealing with requests made by these applicants over the previous two and a half years.
29. In addition to the 59 FOI requests which have been submitted by these two individuals (several of which have been 'meta-requests' seeking copies of internal NHS England information regarding the handling of their requests); 11 requests for internal review have been submitted (plus two informal follow up emails); five complaints have been made to the ICO (excluding complaints regarding NHSE's section 10(1) compliance), and three have been escalated to the Information Rights Tribunal.
30. NHSE therefore consider this latest request to be a continuation of a pattern of behaviour dating back to 2015. It further stated that it had tried to engage with these individuals as far as possible but they continue to make very broad requests on this general subject.
31. Each response provided by NHSE generates additional correspondence; either by way of a 'follow-up' type FOI request, seeking very similar or overlapping information to that which has been previously addressed, or an escalation through the Internal Review/ICO process. It therefore considered that the current request has no inherent purpose or value.
32. NHSE further explained that it considered it to be relevant that across the course of the complainant's requests, his focus has 'drifted' (although always maintaining the core theme of the seven day NHS). When the complainant learns the name of a new member of staff revealed by disclosure made in response to a previous request, or is provided with details of an item of correspondence or piece of work which has been conducted, he proceeds to request additional information in relation to those matters.
33. NHSE considered that this further demonstrates the scatter-gun approach adopted by the complainant and supports its position that the current request is vexatious.
34. NHSE referred to a letter (copy provided to the Commissioner) signed by the complainant and the other individual, as well as many others. It considered it clear from the letter, the complainant and other individual are (or at least, were at the time of their initial requests) junior doctors.
35. In July 2015, the Review Body on Doctor's and Dentists' Remuneration (DDRB) published their review into a new contract for junior doctors. Also in July 2015, the Secretary of State for Health delivered a speech,

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in which an intention for "the majority of hospital doctors to be on 7-day contracts" was set out.

36. Two requests were submitted by the complainant in August and September 2015, which related to the work of the DDRB and the Secretary of State's speech.
37. On 4 November 2015, the Department of Health and NHS Employers published a firm contract offer for junior doctors. On 12 November 2015, the British Medical Association (BMA) announced industrial action by junior doctors.
38. Between 12 November 2015 and 21 November 2015, NHSE received six requests from the complainant and the other individual. Seven requests were received in December 2015 and four in January 2016. On 1 February 2016, the BMA announced further plans for industrial action. NHSE received eight FOI requests from the complainant and other individual in February 2016.
39. On 4 March 2016, Dr Mike Durkin wrote an open letter to junior doctors regarding the contract offer. In between 4 March and 16 March 2016, NHSE received six requests from the complainant and the other individual; including requests for information in respect of the open letter.
40. On 23 March 2016, the BMA announced an intention to escalate planned industrial action due to take place in April 2016. On 31 March 2016 the Department of Health published an equality analysis into the contract. In April 2016, NHS England received six requests from the complainant and the other individual.
41. The pattern of a development in the junior doctor contract negotiations, followed by a clutch of requests by the applicants can be followed through until August 2016, when the new contract began to be phased in.
42. NHSE therefore considered that this clearly demonstrates that the requests are the result of feeling personally aggrieved as a result of the junior doctor contract, and that they have sought information either as a means of attempting to undermine the position of the Department of Health and, by extension, NHSE, and/or in order to be disruptive to the organisations in retaliation to the contract, their dissatisfaction with which is clear from their letter of February 2016.
43. NHSE stated that the complainant in this matter has submitted two very broad requests, which ask for:

*Any email correspondence regarding a briefing to Secretary of State*



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*Any slide packs associated with the briefing*

*Any meeting minutes, either from meetings preparing for the briefing, or the briefing itself.*

*A copy of a 'pack' attached to an email sent in June 2015*

*A slide pack referred to in the aforementioned email.*

44. It considered that as these are very broad requests, they would be likely to capture a very large volume of information. NHSE therefore considered it to be apparent that the complainant has cast their net wide, asking for any information which relates to the briefing they have referred to. As the complainant has not given a timeframe for his request, and has asked for information 'associated' with the briefing, NHSE considered it reasonable to assume that any/all preparatory and follow up correspondence, minutes or slide packs would fall within the scope of this request. The search that it would have to take in light of that broad scope would not be limited to only attendees of any such briefing; it is likely that preparatory or follow-up work was conducted by support staff, teams or via set routes such as diary managers.
45. Although it is possible that ultimately only a reasonably small amount of information may actually be held by NHSE, the searches which would be required in order to get to that position would have to be extensive.
46. The volume of information likely to require review means that the burden of reviewing it will give rise to a detrimental impact on the resources of NHSE. That impact is considered to be unreasonable given the number of requests previously made by the complainant and the other individual and the information provided to them in response to those requests.
47. The emails to which the complainant refers in their requests were sent in June 2015. This predates the applicant's FOI request, which was submitted on 12 October 2017, by more than two years, and as such information likely to be caught by the request is likely to have been produced at least three years ago. Since that time, there have been a number of staffing changes at NHSE, including the recent retirement of former medical director Sir Bruce Keogh. This, and the lapse of time, complicate the search for any information which would be relevant to the complainant's request. The need to accommodate that complication represents a further detrimental impact as a result of dealing with the request, as explained further below.
48. The fact that the applicant has requested 'any' information in respect of a number of limbs of the request, means that it would be necessary for NHSE to attempt to follow each email trail that has one of the key words



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contained in the request to its conclusion, including performing searches for any 'offshoot' conversations. To attempt to establish whether this was the case in relation to an email chain would be very difficult, particularly in cases where the senders/recipients of the correspondence no longer work within NHSE.

49. The breadth of the request also means that it would need to locate all attachments referred to in the correspondence, in order to establish which are relevant. It is common practice for staff to save the 'final' email within a chain, rather than saving each individual email. As such, it is possible that the saved version of an email does not include a relevant attachment. This further complicates the searches which would be required.
50. Additionally, the complainant requests information with regard to a briefing prepared for the Secretary of State for Health and Social Care. NHSE stated that it would therefore need to liaise with the Department of Health and Social Care in order to seek their views on the potential disclosure of information and obtain any relevant communication. Again given the time lapse it is possible that the individuals involved no longer work for the Department, which would present a further difficulty.
51. The Commissioner is aware that the complainant has submitted various related FOI requests to NHSE previously. The table provided to the Commissioner indicates NHSE has provided the complainant with information in all cases as far as possible. If NHSE were to have searched for and located any and all information which falls within the scope of this request, it stated it would then be necessary to cross reference each piece of information with every previous disclosure in order to appropriately apply section 21 to information which the applicant already has access to.
52. Furthermore, it would need to cross reference any information held which falls within the scope of the request, in order to identify any information which has been previously identified as being exempt under any other section of the FOI Act. This would again be very time consuming.
53. NHSE therefore considered that dealing with this request in isolation would have a detrimental impact on the resources of NHS England. However, due to the limitations of section 12, it would not have been possible for NHSE to refuse this request on the basis of section 12. Given the volume of previous requests made by the complainant and other the individual, and the amount of disclosure already made in response, NHSE considered that it was more appropriate to rely on section 14 in any event.

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54. It is the position of NHSE that the information set out above conclusively demonstrates the detrimental impact that complying with this request would impose on the organisation. It further considers that it has demonstrated why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.
55. NHSE appreciated that the complainant considers this information to be of significant public interest and accept that the topic with which the complainant is concerned (the provision of a 'seven day NHS') is a matter of public interest. However it considers that that public interest has been satisfied by the nature and volume of information that has been disclosed to the complainant and other individual to date.
56. The nature and volume of that disclosure means that the significant detrimental impact referred to above is unjustified. When considered in the context of the previous requests, and the disclosure made in response to those requests, the current request has no additional value and achieves no purpose that has not been served by the previous requests.
57. NHSE has disclosed all the information that it has located in response to previous requests made by this complainant and other individual that relate to the matter of concern to them that it has not decided to disclose in reliance on one of the exemptions contained within the FOIA. The volume of those requests and the nature of the disclosure previously made, and the detrimental impact involved in dealing with the current request mean that NHS England wishes to draw a line under this matter and hence has relied upon section 14(1) in refusing the current request.
58. It is NHSE's position that the complainant and the other individual in these matters are 'fishing' for information which they think exists but has not been disclosed in response to the requests made to date, to prove a point which has no basis, and therefore nothing NHSE can supply to them will ever be sufficient. To respond to the current request would continue this cycle and the impact on NHSE would be unjustified as a result.

**The complainant's position**

59. The complainant has argued that this request is "eminently reasonable and would be extremely simple for NHS England to respond to reasonably" has provided the following arguments in support of his complaint.
60. He further contends that the request relates to a key matter of public interest. Furthermore NHSE has not provided any credible argument

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that the request is burdensome, abusive, unreasonable, requiring of disproportionate effort in order to respond and is not intended to obtain information.

61. The complainant also argued that NHSE has not provided any evidence that the level of resources needed to comply with the request for information would be excessive. It appears to be using section 14 of the FOIA in a manner that is designed to avoid the release of further information which is likely to significantly embarrass senior figures within NHS England and government. This is not only wholly inappropriate, but also against the spirit of the FOIA.
62. NHS England's approach appears unreasonable and intransigent. It is particularly salient that a recent Tribunal decision made it clear that the public interest is best represented by all arguments and analysis being within the public domain on these very matters related to 7 day service reforms<sup>1</sup>.
63. The complainant provided further information to the Commissioner which he considered was 'new evidence demonstrating a new significance to this request'. He also referred to the Commissioner's decision in case reference FS50604954<sup>3</sup> and subsequent Tribunal judgement EA/2016/0140<sup>4</sup>. The complainant specifically refer to evidence supplied by Martin Wilson of the DoH:

*"In short, the Department holds no written record of how the 6,000 figure was provided to the Secretary of State and no record of any discussions by him in relation to it. Thus, Mr Wilson considers that the figure was, indeed, most likely provided verbally to the Secretary of State by Sir Bruce Keogh."*

64. The complainant continued that notably FOI releases subsequent to this judgement have revealed that Jeremy Hunt was specifically briefed by NHS England on 7DS shortly before his speech and that this briefing contained the Deloitte analysis/slides.
65. Irrelevant of which Freemantle data this 6,000 was calculated from, it appears that at best the testimony of Martin Wilson is inaccurate and

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624291/fs\\_50604954.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624291/fs_50604954.pdf)

<sup>4</sup>

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2026/Dean,Ben%20EA.2016.140-141-144-%20Sturgeon183%20AMENDED%20\(31.05.17\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2026/Dean,Ben%20EA.2016.140-141-144-%20Sturgeon183%20AMENDED%20(31.05.17).pdf)

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has misled the Tribunal. When questioned about where the 6,000 statistic had come from, Martin Wilson denied that it could have come from Deloitte's analysis:

*"Mr Wilson replied that the information request was about where the figure referred to in the Secretary of State's speech had come from. The evidence showed that it had come from Sir Bruce Keogh of NHS England."*

66. The Tribunal judgement stated:

*"The Tribunal is fully satisfied that it is more likely than not that the reference in the Secretary of State's King's Fund speech to 6,000 deaths came from the conversation the Secretary of State had with Sir Bruce Keogh, who was drawing on the information supplied in connection with the Freemantle 2012 report."*

67. Given the above evidence/facts the complainant considers it is highly arguable that this judgement may have been different if the Tribunal had been in possession of the full facts, including the fact that Jeremy Hunt was briefed formally by NHS England on 7DS (including the Deloitte analysis which involved a figure close to the 6000 mark).
68. The complainant maintained that this evidence demonstrates that the DoH has misled Tribunal/GRC with inaccurate witness testimony, it adds significantly to the public interest arguments for releasing this information, as the court should have been made aware of any briefing by NHS England, as this is a plausible source for the 6000 statistic used by Jeremy Hunt.
69. The complainant further stated that this request relates directly to the DoH stating that it holds "no record of any discussions by him in relation to it. " which can now be shown to be inaccurate/misleading testimony,
70. In *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.
71. In further exploring the role played by circumstances, the Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section 14(1) decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.

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72. After taking these factors into account, the Tribunal concluded that 'vexatious' could be defined as the "...*manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27).
73. The Tribunal's decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
74. At the subsequent Court of Appeal Case (*Dransfield v Information Commissioner and Devon County Council [2015] EWCA Civ 454 (14 May 2015)*), Lady Judge Arden observed that;
- "...the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public."* (Para 68)

**The Commissioner's position**

75. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous and subsequent information requests. Clearly in this case, NHSE considers that the context and history strengthens its argument that the request is vexatious.
76. The Commissioner notes that NHSE consider the complainant feels personally aggrieved about the 7DS. However, she also notes that the complaint letter about the 7DS and the Secretary of State for Health's claim 'Around 6,000 people lose their lives every year because we do not have a proper 7-day service in hospitals. You are 15% more likely to die if you are admitted on a Sunday compared to being admitted on a Wednesday.' that NHSE referred to in paragraph 32 is signed by approximately 300 individuals who all appear to be doctors or medical professionals and therefore it would be difficult to say this matter is a personal issue of the complainant's.
77. The correspondence does not contain any abusive or aggressive language, neither does it make unfounded accusations. The Commissioner does not consider that there is any deliberate intention to cause annoyance rather than the complainant is trying to establish all the facts in relation to the "6000 deaths" statement given by the Secretary of State for Health in 2015. In addition, the Commissioner considers that this is not an unreasonable position given the impact on the NHS, doctors and the public.

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78. This does not appear to be a frivolous request as there is a clear intention to obtain information pertinent to an ongoing issue of concern to many individuals.
79. The Commissioner accepts that the requests are frequent, and at times overlap. As well as this some requests also appear to be very similar to those made by the other individual referred to.
80. However, the Commissioner does not accept that this particular request lacks clear focus and neither does it appear to be 'fishing' for information. The complainant has clearly stated what information he is requesting.
81. The Commissioner notes that the second request refers to a specific slide pack which appears to have been created by Deloitte. Furthermore, he also refers to a specific email attachment. Therefore, the Commissioner does not consider that this is a 'broad request'. The first requests refer to a specific briefing and specific slide packs. Additionally the requests were made after information was disclosed in response to a previous request, so the complainant was not necessarily aware of its existence until then.
82. In addition, the Commissioner notes NHSE's claim that it would have to review the information in order to apply section 21 to information that had previously been provided. Although this is an exemption in the FOIA, NHSE are not necessarily obliged to apply it. Section 21 can be applied where the information requested is already reasonably accessible to the complainant. If NHSE consider that the information has already been provided then it should cite section 14(2) of the FOIA as it would be a repeat request.
83. The Commissioner 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.
84. In this case, however, the context and history of the request suggests to the Commissioner that a response to this request was likely to lead to further communications and more requests for other information on related matters from the complainant with a further consequential burden on NHSE staff.
85. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner 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.



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Furthermore, these requests can also damage the reputation of the legislation itself.

86. The Commissioner notes NHSE's arguments that it is likely there have been staff changes and it may need to liaise with other public authorities, and this adds to the burden of complying with the request. However, every public authority should have appropriate systems in place that track FOI requests and responses which would make it simple to identify what information has already been provided, and what are repeat requests, or what exemptions have been used previously bearing in mind that it is quite conceivable that a number of individuals may make the same request relating to any significant policy changes or changes in NHS practices.
87. The Commissioner is not persuaded that the complainant is being unreasonably persistent as he is not attempting to reopen an issue which has already been comprehensively addressed by NHSE despite the previous responses provided. Furthermore, the Commissioner does not consider that the matter is 'relatively trivial' as this issue is of significant interest not only to junior doctors, but also the general public.
88. It is the Commissioner's view that the key issue in this case is the burden imposed by the request on NHSE and whether the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
89. The Commissioner does accept that the complainant has made a large number of requests which collectively have the 7DS as the main focus. This number is exacerbated when the other applicant's requests are included. From the information provided to the Commissioner, there is no evidence that NHSE has informed the complainant that it considers he is acting in concert with the other individual. However, it is clear to the Commissioner that the two individuals referred to are known to each other.
90. Despite this NHSE has responded to the majority of them up until recently when it concluded that the request was now vexatious.
91. Although the latest request is not patently vexatious when taken in isolation the Commissioner acknowledges that any response is likely to result in further requests being made.
92. However the request has to be seen in the context of both the other requests made by the complainant himself and those of the other applicant identified by NHSE. The Commissioner accepts that the



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cumulative impact of these 59 requests has placed a significant burden on the public authority.

93. As referred to earlier, NHSE has devoted a significant amount of staff time dealing with the requests made by both applicants, roughly equating to between 128 - 220 days of staff time.
94. The Commissioner is satisfied that there would clearly be an impact on NHSE's ability to manage requests from other applicants and disrupt the work of those in the policy and business areas responsible for the issues which the requests relate to. This is compounded by the fact that a response to one request may result in a new request being made.
95. The Commissioner has carefully considered both the NHSE's arguments and the complainant's position regarding the information request in this case. The Commissioner has carefully reviewed all the information and evidence presented to her by both parties and finds that despite the request serving a serious purpose, it is part of a pattern of behaviour that has placed a significant burden on NHSE, to the extent that it can be deemed to be vexatious. She considers, that on this occasion, in all the circumstances of this case, NHSE is entitled to rely on section 14(1).

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**Right of appeal**

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96. 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)

97. 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.

98. 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**