

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2019

Public Authority: East of England Ambulance Service NHS Trust
Address: Whiting Way
Melbourne
Cambridgeshire
SG8 6EN

Decision (including any steps ordered)

1. The complainant requested metadata about a piece of correspondence which was sent to him.
2. The Commissioner's decision is that East of England Ambulance Service NHS Trust ("the Trust") is not entitled to rely on section 14 to refuse the request.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, under FOIA, that does not rely on section 14. If and to the extent that the information is, or would be, the complainant's own personal data, the Trust should rely on either section 40(1) or section 40(5A) to refuse it as appropriate.
4. The Trust 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

5. The complainant has been involved in a long-running dispute with the Trust. In a bid to resolve matters, the Trust and the complainant agreed to enter into mediation to find common ground and move forward.

6. At the end of the process, the Trust wrote to the complainant to say that it could not agree to the outcomes which had been proposed in mediation. The following day, the Trust wrote a further letter stating that it would be taking no further action in respect of any of the complainant's historical grievances and directing the terms on which the complainant should raise any fresh grievances. The Trust stated that these were "reasonable management instructions." It is this further letter which is the subject of the request.

Request and response

7. On 13 December 2017, referencing the above letter which had been sent to him, the complainant contacted the Trust via the whatdotheyknow.com website and requested information of the following description:

"1. Please confirm the exact date and time the letter of 16th March 2017 was first started / created. The details of this can be found in the original 'Word' document.

"2. Please confirm the names of all those senior staff involved in the preparation and approval of any response."

8. On 11 January 2018, the Trust refused the request citing section 14 of the FOIA (vexatious).
9. The Trust completed an internal review on 26 April 2018. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner 8 November 2018 to complain about the way his request for information had been handled.
11. The Commissioner considers that the scope of her investigation is to consider whether the request was vexatious.

Reasons for decision

12. Section 14 of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

13. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
14. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. Dransfield also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
16. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
17. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".
18. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
19. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "*In cases where*

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

the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

The complainant's position

20. The complainant believes that the metadata from the letter would demonstrate that the drafting process began much earlier than the date on which the letter was issued. If this were shown to be the case, the complainant argues, it would suggest that the Trust had not participated in the mediation process in good faith as it had already decided on the outcome before the process had been completed.
21. The complainant also believes that a particular individual, whom he had specifically requested not be involved in the mediation process in any way, had in fact been involved in co-ordinating the Trust's position.
22. Finally, the complainant also notes that he has made several attempts to obtain this information through Subject Access and by informal means. He considers that the Trust's reluctance to release the information indicates that his suspicions are correct.

The Trust's position

23. The Trust provided the Commissioner with a brief statement as to why it had refused the request as vexatious.
24. It considered that the requested information was of no interest to the wider public and was only of interest to the complainant. It stated that it had previously provided a copy of the letter in PDF format and thus it could not see any value in releasing further information – which, it argued, would merely allow the complainant to prolong his grievance.
25. It also noted that this particular request was merely the latest stage in a long-running dispute between itself and the complainant. It did not provide any evidence to support this statement, but did direct the Commissioner's attention to a previous decision notice, involving the same complainant, where the Commissioner had upheld the Trust's use of section 14². It stated that the request in that case related to "a different personal grudge" to the one being considered in this notice, but

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625060/fs50624048.pdf>

provided no further explanation or information as to the extent to which it considered the circumstances to be different.

The Commissioner's view

26. Whilst she considers that this is a finely balanced case, the Commissioner considers that the Trust has failed to demonstrate that the context in which the request was submitted meets the high bar for the request to engage section 14.
27. The Commissioner has revisited the earlier decision notice (relating to the same complainant as this notice) and notes that it was upheld by the First Tier Tribunal. In particular she notes the final two paragraphs of that decision notice:
 30. *The complainant has chosen to use the FOIA as a means to pursue the matter and the Commissioner does not consider this is an appropriate use of the Act. The Trust responded to the complainant's initial request, submitted to it in December 2012, but has continued to respond to the complainant's further associated queries and requests over the following two and a half years.....*
 31. *The Commissioner considers that the purpose and value of the request has diminished over time. The Trust has undertaken an independent investigation into the complainant's original complaint and, beyond the complainant's own interests, there does not appear to be any wider public interest in the matter that is the subject of the request. The impact on the Trust of complying with this request would therefore be disproportionate to its value.*
28. The question for the Commissioner to consider in respect of the current request is whether there has been a significant change in the interim period, either in the complainant's behaviour or in the broader relationship between the complainant and the Trust which would mean that her previous analysis would no longer describe the situation accurately.
29. As paragraph 31 of the previous decision notice points out, at the time of that notice, it appeared that all avenues of investigation had been exhausted by the complainant and information requests were being used as a means by which to reopen or revisit matters which had already been closed.
30. The Trust's decision to enter into mediation with the complainant does, in the Commissioner's view, constitute a significant change in the broader relationship between the two parties.

31. Given that the Trust entered into that process on a voluntary basis, the Commissioner considers that there is a value in understanding how it participated in that process and why it came to the conclusion that it did. The Commissioner expresses no view as to whether the Trust was right or wrong to act in the way that it did, only that there is value in examining the processes which it followed.
32. Even if this point were disregarded, the Commissioner considers that citing a previous section 14 decision notice is not, in itself, sufficient evidence to demonstrate that section 14 would be engaged. The Trust provided no evidence which would have demonstrated that the pattern of behaviour highlighted in the previous decision notice had continued or how closely the two requests were linked to each other or the underlying dispute.
33. The Commissioner is keen to note that she has reached her decision in this case on the specific facts and context in which the request was made. Her decision does not mean that the Trust is prevented from applying section 14 to any further requests which this complainant makes – if the circumstances warrant it.
34. However, in this particular case, the Commissioner does not consider that the request was vexatious and therefore the Trust is not entitled to rely on section 14 to refuse it.

Other matters

35. The Commissioner has not sought any indication from the Trust as to the extent of the information, within the scope of the request, which it holds – as it is not necessary for her to do so in order to reach a judgement on the application of section 14. However, she notes that the request seeks information about a letter that was sent to him and therefore there is a strong possibility that at least some of the information will relate to the complainant and, hence, be his personal data.
36. The Commissioner put this point to the Trust in the course of her investigation. The Trust was of the view that none of the requested information was the complainant's personal data (even though it refused to provide its initial response via whatdotheyknow.com because it considered that the response "*contains personal information relating to you*"), but noted that some might be the personal data of third parties.
37. It is neither necessary nor appropriate for the Commissioner to reach a decision on that point in this notice and the Trust will have a further opportunity to consider the point when issuing its fresh response. However the Commissioner would note that if the requested information is (or would be) the personal data of the person who made the request, the appropriate response under the FOIA is to issue a refusal notice relying on either section 40(1) or section 40(5A).
38. The Commissioner would also note that it took the Trust some 71 working days to complete its internal review – which she considers to be poor practice. Internal reviews should normally be completed within 20 working days and should never take longer than 40 working days.

Right of appeal

39. 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

40. 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.
41. 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

**Ben Tomes
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