

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

### **Decision notice**

**Date:** 4 October 2022

**Public Authority:** NHS Digital  
**Address:** 7 & 8  
Wellington Place  
Leeds  
West Yorkshire  
LS1 4AP

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

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1. The complainant requested information from NHS Digital relating to a patient's NHS details and previous addresses. NHS Digital refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore NHS Digital was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

#### **Request and response**

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4. On 16 November 2021, the complainant made the following request for information to NHS Digital:  

"I am acting in connection with the estate of the late [name redacted] believed to have been born [date redacted]. He died [date redacted]. Can you provide information on [name redacted] such as NHS cards and/or previous addresses?"
5. On 6 December 2021, NHS Digital provided its response and said the request was being refused because it was vexatious under section 14(1) of FOIA.
6. Following an internal review, NHS Digital wrote to the complainant on 22 December 2021, upholding its position.

## Scope of the case

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7. The complainant contacted the Commissioner on 12 January 2022, to complain about the way their request for information had been handled.
8. The scope of this case is to determine whether NHS Digital was correct to refuse to comply with the request on the basis of section 14(1) of FOIA.

## Reasons for decision

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### Section 14(1) – vexatious requests

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

### **NHS Digital's view**

17. NHS Digital chose to apply section 14 on the grounds that the complainant submitted 352 information requests between the dates of 21 May 2021 (the complainant's first information request) and 3 December 2021 (the date of NHS Digital's initial section 14(1) response). In one particular month, it received 94 information requests from the same complainant.
18. NHS Digital provided evidence that the complainant routinely sent follow-up queries in the form of information requests in response to information that had already been provided and often sent multiple requests a day. The information request of 16 November 2021, which is the subject of this decision notice, was one of 11 requests that the complainant submitted that day.
19. NHS Digital took the view that the complainant's internal review request provided evidence that the complainant showed no intent to reduce the frequency of their information requests. In response to NHS Digital's refusal of the complainant's information request the complainant said “Issuing the attached blanket letter, will only result in my colleague from another firm making the requests for information.”

20. The Commissioner is satisfied that this demonstrates that the complainant intended to continue making information requests despite NHS Digital's refusal of their request.
21. NHS Digital also argued that the broad wording of the complainant's requests is such that it suggests the complainant is either not sure of the specific information they are seeking or they intend to "cast their net widely" to try and capture as much information as possible.
22. NHS Digital has explained that to account for all the information covered by the broad scope of the complainant's information request, it would take multiple searches across multiple teams, which would have a detrimental impact on NHS Digital's ability to comply with other information requests.
23. NHS Digital has explained that it considers that the complainant has made the request in their capacity as an employee of a specific company. Therefore, while the information may be useful to the complainant/company they work for, this is not the same as information being of public interest.
24. In the complainant's internal review request, he expressed his frustration that NHS Digital did not warn him that he was submitting too many requests. NHS Digital explained to the Commissioner that if it informed the complainant of their excessive number of requests, it would have likely resulted in the complainant attempting to negotiate an acceptable level of requests and in this time the complainant would submit more, thus worsening the problem. It also explained that the burden placed on NHS Digital by the complainant was already so great that refusing his requests was the only option available to them.

### **The complainant's view**

25. In their complaint to the Commissioner the complainant explained that NHS Digital was refusing to respond to any outstanding and future freedom of information requests.
26. The complainant has appealed to the Commissioner, as they disagree with NHS Digital's decision to refuse their requests. The complainant argues that they were not informed that they were submitting too many requests and had they been aware, they would have ceased to send any more until their active requests had been answered.
27. The complainant also explained that they were not given the option to pay NHS Digital to compensate them for the burden of complying with their requests.

### **The Commissioner's decision**

28. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
29. The request itself is one that NHS Digital argued represents a significant burden on the organisation which is only exacerbated by the frequency and overlapping nature of the other requests submitted by the complainant.
30. The Commissioner accepts that the complainant's information requests were worded in such a way that was intended to cover the widest scope of information possible as the complainant repeatedly asked for "any information relating to" a named individual and would therefore place great strain on NHS Digital's resources in complying with the request.
31. The Commissioner notes that NHS Digital provided evidence that the complainant submitted 352 similarly worded requests prior to the date of their application of section 14(1), up to 94 requests in a month and often several requests a day.
32. In the Commissioner's view, the requester showed no signs of reducing the number of requests they submitted and believes, from the evidence provided, that should NHS Digital have complied with the requests, it would have likely resulted in further correspondence from the complainant. The Commissioner has seen nothing to suggest that providing the complainant with their requested information in the past has done anything to reduce the quantity of requests or satisfy the complainant.
33. The Commissioner also fails to see how the disclosure of the requested information would benefit the wider public. The Commissioner accepts that the complainant likely has a particular interest in the requested information as the information relates to the complainant's professional capacity. However, the number of information requests, of such a broad nature, that the complainant has made to NHS Digital is excessive and will cause a significant burden to NHS Digital.
34. The Commissioner has considered all the factors in this case and is satisfied that NHS Digital has correctly refused the complainant's request under section 14(1) of FOIA.

Right of appeal

35. 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: 0203 936 8963

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)

36. 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.
37. 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 .....**

**Claire Churchill**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**