

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

### **Decision notice**

**Date:** 21 March 2023

**Public Authority:** Essex Partnership University NHS foundation Trust (the Trust)

**Address:** The Lodge  
Lodge Approach  
Runwell  
Wickford  
Essex  
SS11 7XX

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

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1. The complainant made a request for information as to how a patient makes the Trust aware of their treatment team choice following a GP referral. The Trust refused to comply with the request under section 14(1) FOIA as it considers the request to be vexatious.
2. The Commissioner's decision is that the Trust was entitled to rely on section 14(1) of FOIA to refuse this request.
3. The Commissioner requires no steps to be taken.

### **Request and response**

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4. The complainant made a request on 22 January 2023 for the following information:  
  
"When an NHS patient is referred to Eput by their GP  
In the referral process to Eput  
If a patient knows the Eput team they would like to be treated by.  
How does the patient make Eput aware of their Treatment Team choice?"
5. On 17 January 2023, the Trust refused to comply with the request citing section 14(1) FOIA (vexatious requests).

6. The complainant requested an internal review on the same date. This was provided on 28 February 2023 by the Trust; it upheld its application of section 14(1) FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 March 2023 to complain about the way the request for information had been handled.
8. The Commissioner has considered whether the Trust was correct to refuse the request under section 14(1) FOIA.

### **Reasons for decision**

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9. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

10. Section 14(1) 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.

11. The term “vexatious” is not defined within 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.
12. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. 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).

14. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, 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.
15. 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".

16. 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.
17. 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 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."

### **Serious purpose and value**

18. The complainant clearly has a serious purpose and value behind making the request. He considers the information is of importance as it affects other NHS patients as well as the complainant who may wish to choose a particular team upon referral.

### **The burden imposed by the requests**

19. The Trust has explained that since August 2019 the complainant has made 27 requests for information under FOIA which comprise a total of

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

76 individual questions. It said that the requests have all been aimed around availability of a certain treatment at the Trust, its funding by the relevant commissioning authority and patients choosing their treatment irrespective of medical recommendation. The Trust provided the complainant with a table setting out the history of the requests made.

20. In addition to the FOIA requests, the Trust also explained that the complainant had made several complaints in relation to the same issues under the Trust's complaints procedure.

### **Overlapping requests**

21. The Trust argued that the requests made were overlapping relating to these similar subject matters.

### **Holistic approach**

22. The Trust has taken the view that responding to this latest request would be disproportionate and unjustified.

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

23. The complainant has argued that this request, specifically about a choice of team on referral has not previously been asked and they have not previously been provided with any information that would facilitate 'this legal right to choose team in practice/make workable for patient.' The complainant considers that the Trust has a history of answering a different question to the one put in a FOIA request.

### **The Commissioner's view**

24. In this case the Commissioner agrees that there is a serious purpose and value in the request as disclosure would provide information to patients who may wish to choose a particular team upon referral.
25. However, the Trust has said that since August 2019 the complainant has submitted 27 requests containing 76 questions, surrounding amongst other similar subject matters, a patient's right to choose treatment. This most recent request has moved on to the right to choose a specific team rather than treatment but there is clearly a link to the subject matters of the prior requests.
26. Upon viewing the requests, some are lengthy and contain multi-parts. Some of the requests contain questions which would not amount to requests for recorded information and are being used as a vehicle to criticise the Trust. The Commissioner considers that the requests would impose a collective burden upon the Trust to respond.

27. Looking at the context and history, it is clear that some of the 27 requests have been made in quick succession whilst sometimes there are longer breaks in between requests and during some periods, requests are made on an average of one per month. Certainly, the requests made in quick succession, where the complainant does not allow the Trust the statutory time for compliance to respond before submitting a new one, may have the effect of harassing the public authority in this case.
28. The complainant has clearly received responses from the Trust relating to previous FOI requests and complaints as he has referred to his dissatisfaction with the Trust's previous responses and information provided in his complaint. The Commissioner accepts that it would not appear that the complainant has specifically asked for or received information regarding how to choose a particular team upon referral though. However previous requests have related to a patient's choice regarding treatment and this latest request seems to stem from this. Whilst the Trust has clearly provided information previously, it would appear that responding to requests on these subject matters do not seem to bring things to a resolution. Furthermore the FOIA requests would appear to stem from wider complaints that the complainant has with the Trust and therefore the FOIA requests may be being made as another tool to pursue the complainant's dissatisfaction with the Trust.
29. Considering the multi-parts to some of the FOIA requests and the fact that some clearly would not amount to requests for recorded information, the number made along with the wider complaints outside of FOIA, the Commissioner does consider that the tipping point has now been reached due to the collective burden imposed.
30. Taking a holistic view of this request, the Commissioner is satisfied that whilst there is a serious purpose and value to the subject matter of the request, due to the collective burden and the fact that responding to this request would be unlikely to bring matters to resolution, on balance the Commissioner considers that the Trust correctly categorised this latest request as vexatious under section 14 FOIA.

## **Right of appeal**

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31. 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)

32. 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.
33. 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**