

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Essex Partnership University NHS Foundation Trust

Address: The Lodge
Lodge Approach
Runwell
Wickford
SS11 7XX

Decision (including any steps ordered)

1. The complainant has requested information about complex care pathways. The above public authority ("the public authority") refused the request as vexatious.
2. The Commissioner's decision is that the request was not vexatious and therefore the public authority was not entitled to rely on section 14(1) of FOIA to refuse it.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response, to the request, that does not rely on section 14(1) of FOIA.
4. The public authority 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. On 30 November 2022, the complainant wrote to the public authority and requested information in the following terms:
 1. Could please provide details on the "complex care pathway" for patients?
 2. Is there any trust documentation to define which patients [sic] meet the criteria, could you please provide a copy?
 3. Who decides if a patient is on the complex care pathway?
 4. Is the "complex care pathway" a common NHS terminology found in most/all areas of the NHS not just limited to mental health?"
6. The public authority initially failed to respond to the request and the Commissioner had to issue decision notice IC-211963-R3P7 to get it to respond.
7. When the public authority finally responded on 6 April 2023, it provided information in respect of elements 1 and 4. In respect of elements 2 and 3, it stated that:

"There are a number of complex care pathways that are specific to certain diagnoses/patient cohorts. We are unable to confirm whether Trust documentation is in existence without knowledge of the specific condition/ patient cohort....Usually patients are referred for an assessment of their needs, following which they are treated and cared for in accordance with the relevant complex care pathway."

Request and response

8. On 7 April 2023, the complainant wrote to the public authority and requested information in the following terms:

"Is it possible to have a list of adult mental health conditions covered by the complex care pathway? If that is not specific enough, please use the below conditions as a guide

"Of particular interest would be any conditions with anxiety depression as key element including treatment resist [sic] depression."
9. The public authority responded on 21 April 2023. It refused the request as vexatious and said it would not be responding to further correspondence on the same matter.

Reasons for decision

10. A public authority may refuse a request which is vexatious. A vexatious request is one that lacks a serious purpose or which would, in the context of the requester's broader interaction with the public authority, require a disproportionate effort to respond to.
11. The public authority pointed to the findings of a previous decision notice the Commissioner had issued in which an earlier request from the complainant had been deemed vexatious.¹ It noted that the latest request was the 30th request the complainant had submitted on this topic – with many of his request having contained multiple parts.
12. The public authority said that the complainant had conducted a "campaign of complaints" against it, that staff felt "demoralised" by having to respond continuously and that the burden of requests was causing important NHS resources to be diverted.
13. When seeking a submission from the public authority, the Commissioner noted that the present request appeared to have been submitted as a refinement or clarification of an earlier request and that the complainant had made the public authority aware of mental health issues that he had. The public authority did not respond directly to either point.
14. The complainant argued that he was simply trying to obtain information.

The Commissioner's view

15. The Commissioner considers that the public authority has not demonstrated that this request meets the high hurdle to be vexatious.
16. However, in his view the arguments are very finely balanced. He will return to the question of the intent behind the requests later, but he recognises that, whatever the **intent**, the **effect** of dealing with 30 requests over a three year period would be considerable – especially when, as here, the public authority has a genuinely-held belief that it has provided all the information it can.
17. The Commissioner does recognise that the complainant's requests have previously exhibited traits that would point towards vexatiousness. He

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024759/ic-220743-t8p4.pdf>

has made some comments in the Other Matters section aimed at clarifying the position going forward.

18. That being said, the Commissioner is also bound to recognise that the requests do appear to have a serious purpose.
19. The complainant has focused on a particular type of treatment whose provision within the public authority's area appears to vary significantly by geography. When viewed as a whole, the requests are aimed at understanding why this is the case and what rights patients have to choose such treatment if they so wish. That is, on its face, a serious purpose and the Commissioner recognises that there would be a public value to the information that has been sought.
20. The Commissioner has also considered the circumstances of the present request – which was submitted as a follow-up to a previous one. In the previous request, the complainant had asked what policies were in place for certain patients. The public authority chose to comply with that request (ie. it did not consider the request to be vexatious) and the thrust of its answer was "it depends on the diagnosis." In making this present request, the complainant has narrowed his request to diagnoses of anxiety and depression. It seems unfair for the public authority to issue a response, which essentially invites the complainant to refine his request, only then to refuse the refined request as vexatious.
21. Whilst the public authority has provided a schedule of the previous requests the complainant had made, it provided no indication of the answers it had provided. The complainant has explained, in respect of a different request, that he finds it difficult to navigate the bureaucracy of the NHS and that he has often had to refine requests because he had realised that he had used the wrong terminology. Without access to responses the public authority provided to other requests, the Commissioner finds it difficult to judge the extent to which that has been the case previously, but the evidence in the present request would support the complainant's explanation.
22. Finally, the Commissioner notes that, as the complainant has explained to the public authority previously, he (the complainant) has dyslexia and "comprehension difficulties". The complainant has explained that he sometimes has difficulty in understanding the jargon and acronyms the NHS uses and he admits that he has sometimes had to make several requests because he hasn't quite been able to explain what he wants in a manner consistent with the NHS' internal terminology.
23. The Commissioner is obviously not in a position to make a medical judgement on the degree to which the complainant's requests have been affected by any medical condition. However he does note that,

despite having had the opportunity to rebut this argument, the public authority has not done so.

24. Having looked at the sequence of requests, the Commissioner finds some support for the complainant's view. Taken at face value, the requests do seem to be focused on a particular topic and could appear repetitive – however, they are also consistent with a person gradually honing in on the information he is interested in and using what he has previously found to better-target future requests.
25. The request did therefore have a serious value and purpose. Whilst it is clear that the requests as a whole are causing a burden, the Commissioner considers that this is not disproportionate considering the way in which the public authority has responded and the complainant's challenges in understanding information. Given the explanations provided by the complainant, the Commissioner is not persuaded that the request was submitted with the intent to cause annoyance or to be burdensome.
26. The public authority is therefore not entitled to rely on section 14(1) of FOIA and must thus issue a fresh response to the request.

Other matters

27. Notwithstanding above points, the Commissioner would like to reiterate that the decision is a finely-balanced one and the complainant is at high risk of making vexatious requests in future if he is not careful. In the spirit of avoiding that happening, the Commissioner offers the following advice.
28. The information the public authority holds on this particular topic will be finite and the complainant may be coming close to the point at which the public authority has no further recorded information it can provide.
29. Before making further requests, the complainant should consider the following points:
 - Any future request should be focused on the recorded information (such as copies of policies or statistics) he wishes to receive. The public authority is not required to give its opinion or its interpretation of legislation.
 - He should be mindful of the effect that dealing with multiple requests will have on the public authority and try to minimise the amount of information he is seeking. It may be helpful if he were to explain what his "end goal" is (in terms of recorded

information), to lessen the need to have to keep refining the terminology. He should also carefully review the responses he has received to previous requests to ensure that he is not requesting information that has already been provided to him.

- Requests should not involve commentary, his opinion of the public authority (or its policies) or any attempt to argue with previous responses he has received. If he is dissatisfied with a response, he should seek an internal review, setting out what recorded information he feels should have been provided or challenging any exemptions that have been used to withhold information.
 - FOIA is not a means for him to challenge any treatment he might currently be receiving from the public authority or anyone else.
 - Future requests are less likely to have a serious purpose if they stray from the core themes mentioned above: the availability of various treatments from the public authority and the rights of patients to choose. Equally, requests are unlikely to have a serious purpose if they begin seeking information that the public authority has already provided.
30. The Commissioner would also recommend to the public authority that, where possible, it tries to reduce jargon in its responses – as this may reduce some of the follow-up correspondence.

Right of appeal

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

Website: 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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