ico. Information Commissioner's Office

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 November 2010

Public Authority: Dr Lionel N Cartwright

Address: The Harvey Practice
18 Kirkway
Broadstone
Dorset
BH18 8EE

Summary

On 18 February 2010 the complainant requested that her doctor's practice should provide her with a copy of the second component of its application for 'paper light' status (regarding the keeping and transferring of electronic NHS records). For the purposes of the Act the individual doctors within the practice are considered to be the public authorities. This Notice is therefore addressed to the senior partner in the practice, as the relevant public authority. This was the latest request in a series of requests and correspondence which had started in 2000 and was concerned with the information held on the complainant's medical records and the right of the practice to keep electronic records. This current request has been refused as vexatious under section 14(1) of the Act. The Commissioner is satisfied that the public authority was correct to refuse the request; however the Commissioner has found several procedural breaches.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision

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The Request

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2. On 18 February 2010, the complainant made the following information request to The Harvey Practice (the 'practice'):

   'Bournemouth and Poole PCT's email of 10 January 2008 confirms you have completed the first component of your application for paper light status and are now free to apply for the second component. Please send me a copy of your application for component 2 and provide details of the outcome'.

3. On 18 February 2010 the practice asked the complainant to contact Bournemouth and Poole Primary Care Trust (the 'PCT') for the information.

4. On 19 February 2010 the complainant asked the practice to provide her with an official Refusal of Request Notice.

5. On 18 March 2010 the practice informed the complainant that it believed her request to be vexatious and was refusing it on these grounds.

6. On 21 March 2010 the complainant asked the practice to whom she could direct a complaint.

7. On 30 March 2010 the practice advised the complainant that she should contact the ICO to make a complaint.

The Investigation

Scope of the case

8. On 28 April 2010 the complainant contacted the Commissioner to complain about the fact that her request for information had been refused as vexatious.

Chronology

9. On 23 July 2010 the practice sent the Commissioner a summary of its correspondence with the complainant since 1998. The practice explained why it considered the complainant's request to be vexatious.

Findings of fact

10. In 1998 the complainant registered at the Harvey Practice.

11. In July 2000 she applied for access to her medical records and this was provided by the practice.

12. There then followed a period of protracted correspondence between the complainant and the practice. This involved requests for the amendment of the complainant's records and for copies of any handwritten records and electronic copies of her medical records. This culminated in 2004 with the practice's decision to remove the complainant from its lists and to send her records to the Dorset Family Health Services Agency ('FHSA'). However, in line with current regulations it kept an electronic copy of her archived records.

13. This led to further correspondence in which the complainant questioned the right of the practice to keep such computerised records. She has questioned whether the practice had the right to maintain only computerised records before October 2000. The complainant has been provided with a copy of the first component of the practice's application for 'paper light' status (regarding the keeping and transferring of electronic NHS records). She has now requested a copy of the second component of the practice's application.

14. This request is therefore directly related to the requests and correspondence which have been sent to the practice since 2000.

15. The Commissioner notes that the medical practice itself is not for the purposes of the Act a public authority. Rather, each GP within the practise is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the Act to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. A more detailed explanation of how GPs are covered by the Act is contained in the Legal Annex at the end of this Notice.

16. For the purposes of this decision notice the senior partner has been named as the relevant public authority. The Commissioner notes that the senior partner has undertaken to respond to the request as the public authority given that the practice holds the information on his behalf. However for clarity and ease of reading the notice refers to the

practice where appropriate in detailing the correspondence and analysis that has taken place.

Analysis

Substantive Procedural Matters

Section 14 Vexatious and repeated requests

17. Section 14(1) states:

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

18. In the ICO's published guidance to the question of vexatious requests (Awareness Guidance 22), it is stated that if a request is to be proved vexatious, it is necessary to make strong arguments under one or more of these headings:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

This guidance can be found on the ICO website at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

19. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner (EA/2007/0130)*:

"a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach…" (paragraph 20).

Could the request fairly be seen as obsessive?

20. The guidance to vexatious requests explains that the wider context and history of a request is important to this question. Relevant factors include the volume and frequency of correspondence, requests for information that has already been seen or a clear intention to reopen issues that have already been debated and considered.

21. In this case it is apparent that this request is linked to issues which the complainant has been addressing with the practice over the past ten years. It would appear that she has been corresponding with the practice over the question of their electronic medical records and the nature of the information that the practice holds in those records. This has involved the complainant and the practice in a large volume of correspondence.

22. Since 2009 the complainant's correspondence has focused upon the fact that the practice holds her archived medical records and that these are computerised. She has been sent the first component of the practice's 'paper light' application as well as the response. Her current request concerns the second component of this application.

23. The Commissioner appreciates that this is a request for new information and that the complainant feels she has a legitimate complaint against the practice. However the Commissioner considers that the request is clearly intended to progress an argument which has been ongoing between the complainant and the practice for a number of years. It is undoubtedly a further attempt to pursue issues which have already been addressed and as such, in line with our guidance, can be defined as obsessive.

24. During the course of this ten year correspondence, the complainant has complained to the PCT and the Healthcare Commission about the practice. Both have answered her complaints and provided her with information but neither has deemed it necessary to take action against the practice. The complainant threatened the practice with court action in 2002 but the claim brought against the practice was struck out by the court. In 2007 the complainant again threatened court action.

25. The complainant raised her concerns about the record keeping of the practice with the ICO in 2001 and again in 2004. She was engaged in regular correspondence with the ICO between 2004 and 2009 regarding this matter. In 2002 the Commissioner informed the complainant that the ICO considered it unlikely that the practice had breached the Data Protection Act 1998 (the 'DPA') and in 2006 the Commissioner again concluded that it was unlikely the practice had

breached the retention provisions of the DPA. Despite these conclusions, the complainant continued to correspond with the ICO about the practice.

26. This argument has therefore involved the Healthcare Commission, solicitors appointed by the complainant, the PCT and the ICO. The FHSA also became involved when the practice removed the complainant from its lists in 2004 and sent it her records. Other bodies such as the Strategic Health Authority and the General Medical Council (the 'GMC') have also been consulted regarding this complaint against the practice. However no action has been taken against the practice regarding its policies or its handling of the complainant's medical records.

27. The guidance states that an obsessive request can most easily be identified when an individual continues with a lengthy series of linked requests even though they have received independent evidence on the issue.

28. This is clearly applicable to this case and is supported by the findings of the Information Tribunal in the case of *Welsh v Information Commissioner EA/2007/0088 (16 April 2008)*. In that case, the Information Tribunal found that it was the "persistence of the complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious."

29. On the basis of the above findings, this request would appear to be obsessive.

Is the request harassing the authority or causing distress to staff?

30. The practice has argued that the effect of the complainant's correspondence over the years is both harassing and causing distress. The guidance suggests that the request should be viewed in context and that relevant factors could include the volume and frequency of correspondence.

31. The practice has argued that the complainant's correspondence has put an unreasonable pressure upon its resources and that the burden of this has fallen upon the Practice Manager. The practice argues that the complainant has persistently pursued different avenues of enquiry and that no response would seem to be satisfactory to her. The Practice Manager has asked her to stop sending emails as this was resulting in four or five pieces of correspondence in one day.

32. The Commissioner is satisfied that the effect of the complainant's correspondence over the past ten years is undoubtedly harassing and that the Practice Manager has been inundated with requests and arguments to the point of distress. This request is part of a pattern of correspondence which although not personal or hostile, has the effect of creating pressure upon one individual who has attempted to deal with all the correspondence and requests appropriately.

Would complying with the request impose a significant burden in terms of expense and distraction?

33. The guidance states that this question must consider whether responding would divert or distract staff from their usual work.

34. The Tribunal in *Gowers v the Information Commissioner & the London Borough of Camden (EA/2007/0114)* said "…that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor" (para. 70).

35. In the case of *Coggins v the Information Commissioner (EA/2007/0130)*, the Tribunal found that a "significant administrative burden" (para. 28) was caused by the complainant's correspondence with the public authority, which started in March 2005 and continued until the public authority applied section 14 in May 2007. The complainant's contact with the public authority ran to 20 information requests, 73 letters and 17 postcards. The Tribunal said this contact was "…long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received….the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions…" (para 28).

36. In this instance the complainant has a history of making repeated requests and complaints to the practice. Over the past 10 years, the correspondence has included letters to the Practice Manager, to individual doctors at the practice, to the Chief Executive of the Dorset Health Authority, to the GMC, the PCT, the FHSA, the Healthcare Commission and the ICO. The correspondence overlaps in the sense that it regards the nature and content of the records kept by the practice. The Commissioner considers that the numerous letters from the complainant to the practice has involved it in a significant workload which has distracted it from its core functions and placed an unreasonable demand upon the practice manager.

37. The guidance also states that the wider context to a request can be relevant: if responding to this request would lead to significant number of further requests it may be classed as imposing a significant burden.

38. The practice has argued that responding to this request would lead to further correspondence concerning the policy of the practice and its handling of the complainant's case. This would seem likely considering the circumstances of this request and given that it would appear the complainant is interested in demonstrating that the practice has broken current regulations in its handling of her medical records. Past experience clearly suggests that the provision of this information would lead to further correspondence and further burden upon the practice.

39. The Commissioner is also mindful that responding to this request would continue to involve the practice in work which diverts staff from their usual activities. The practice appreciates the right of individuals to complain but feels that it becomes very costly when the matter has been overturned by courts and agencies on prior occasions.

40. It has not been suggested that the request in itself would be burdensome; however it is apparent that it is one request in a pattern of requests and correspondence which has created a significant workload in the past and is likely to lead to further work.

Is the request designed to cause disruption or annoyance?

41. It is difficult to demonstrate that a requestor's intention is to cause disruption and the practice acknowledges this. However it does consider that the complainant harbours issues because of her experience with the healthcare system and that it is being unfairly held responsible for this. The Commissioner is however unable to conclude that the request is designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

42. The guidance is clear that the Act is not generally concerned with the motives of an applicant; however if a request clearly lacks a serious purpose or value it may support an argument that it is vexatious.

43. The complainant has argued that her request has a serious purpose. She believes that the practice started processing medical records on a computer when it was obliged by law to keep handwritten records. She has been concerned about the information held on her medical records by the practice and remains of the opinion that the practice does not have the correct authorisation to keep her records electronically. The complainant believes the practice should have kept paper records but

did not. She has also questioned whether the practice is still processing her health record.

44. The practice has explained that when the complainant was registered with it, her old paper records would have been sent to it by her last practice. These would have been summarised electronically. It did not create any new paper records regarding the complainant's health care from the time she registered as a new patient. When the complainant was removed from its lists, the practice sent her old paper records to the FHSA and a computer printout of any other records created whilst she was a patient there. In line with current regulations, it kept an electronic copy of her archived records. It is allowed to add to its archived records and then ask the FHSA to update their current records accordingly; however the practice is not updating or processing the complainant's current health record.

45. In addition to the above, the complainant has also raised her concern that the computerised records sent to the FHSA were incomplete because they were not qualified by a specific doctor at the practice who she believed was responsible for her health care at that time.

46. The practice has explained that the particular doctor would not have qualified the above records as the complainant was in fact registered with the practice and not the individual doctor. The complainant does not accept this and has argued that *The National Health Service (Choice of Medical Practitioner) Regulations 1998* was in force throughout the time she was a patient at the practice and that this means she was registered with a specific doctor.

47. The Commissioner cannot comment upon the application of the above Regulations. However, he considers that this is a further example of the complainant's view of the practice and indicates her unwillingness to accept what would appear to be reasonable explanation for the practice's conduct.

48. The practice feels that the complainant's request does lack a serious purpose or value. It has argued that the Secretary of State tells GP practices what they can do with patient records and it has followed the law. It is not allowed to remove records and has not done so.

49. The practice argues that the Government will not alter its opinion on how records should be kept and stored and that to persist in asking whether the practice had the right authority at the correct time does not have purpose or value.

50. The PCT is satisfied with the computerised record keeping of the practice and has not raised any concerns over the policies of the practice. The Commissioner is therefore satisfied that there is nothing to be gained from the pursuit of this matter.

51. However, the request clearly holds significance for the complainant and in isolation it could be argued that there is a serious purpose in ensuring that a practice is moving towards 'paper light' status within the regulations.

Conclusions

52. In the light of the above arguments, the Commissioner's conclusion is that the public authority was correct to refuse this request as vexatious.

53. This request is the latest part of a ten year correspondence with the practice and, in line with the ICO guidance, it fulfils the criteria for an obsessive request. Whilst the complainant might not intend to harass the practice, the effect of this request is certainly distressing to the practice manager. It would also appear that the provision of this information will not be the end of the matter. The request can be seen to be an attempt to continue with a line of questioning which the practice has already addressed. Crucially the PCT does not consider that there is any case to answer regarding the practice's computerisation of patient records. Other agencies have been involved over the past 10 years and none has judged that the policies of practice should be further investigated.

54. In the case of *Betts v Information Commissioner EA/2007/0109(19 May 2008)* the Information Tribunal found that the request in that case was vexatious in that it was part of persistent correspondence which had continued for 2 years despite the practice's disclosures and explanations. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the practice. It was very likely to lead to further correspondence, requests and complaints. All these arguments apply to this case.

Procedural Requirements

Section 17

55. The full text of section 17(5) and 17(7) is available in the Legal Annex at the end of this Notice.

56. In its refusal notice, the public authority did not inform the complainant how a complaint might be made either to the public authority or to the Information Commissioner's Office. In failing to explain whether it had complaint procedures in place, the public authority is found to be in breach of section 17(7)(a). In failing to inform the complainant that she had the right of complaint to the Commissioner, the public authority is found to be in breach of section 17(7)(b).

The Decision

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57. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The public authority correctly refused the request for information as vexatious under section 14(1) of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority is found to be in breach of section 17(7)(a). It failed to explain whether it had complaint procedures in place in its initial response.

- The public authority is found to be in breach of section 17(7)(b). It failed to inform the complainant that she had the right of complaint to the Commissioner in its initial response.

Steps Required

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58. The Commissioner requires no steps to be taken.

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Right of Appeal

59. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 29th day of November 2010

Signed ……………………………………………………

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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Legal Annex

Section 14: Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

> "Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.

Section 17: Refusal of Request

Section 17(5) provides that-

> "A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1 (1), give the applicant notice stating that fact".

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50."

Status of GPs under the Act

Schedule 1 of the Act outlines which bodies are covered by the Act. Part III of Schedule 1 relates to organisations and individuals in the National Health Service. Paragraphs 44 and 45 of Part III deal with the coverage of GPs:

"44. Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service Act 1977, in respect of information relating to the provision of those services

45. Any person providing personal medical services or personal dental services under arrangements made under section 28C of the National Health Service Act 1977, in respect of information relating to the provision of those services."

The Commissioner is satisfied that a GP is a separate legal person who falls within either or both of the classes above. Therefore each GP is a separate public authority for the purposes of the Act whether they operate in a medical practice with other GPs or not.

However, the Commissioner recognises that information held by GPs will only be covered to the extent where that information relates to the 'provision' of general or personal medical services. Therefore, some information held by GPs will not fall within this condition.