

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 August 2012

**Public Authority:** The Royal Liverpool and Broadgreen  
University Hospitals NHS Trust

**Address:** The Royal Liverpool University Hospital  
Prescott Street  
Liverpool  
L7 8XP

#### Decision (including any steps ordered)

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1. The complainant requested information from the Royal Liverpool and Broadgreen University Hospitals NHS Trust (the 'Trust') concerning an unidentified doctor and an operation performed on the complainant by the Trust. The Trust has applied section 14(1) of the FOIA (vexatious requests) to a number of requests by the complainant seeking such information.
2. The Information Commissioner's decision is that the Trust has correctly applied section 14(1) of the FOIA. The Commissioner requires no steps to be taken.

#### Background

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3. The complainant has pursued a complaint with the Trust since August 2007 following an operation performed in (month redacted) 2006. The complainant considers that errors by treating medical staff and poor quality information about the risks of the procedure lead to him being left with long term pain. The Trust responded to the complaint in September 2007 and did not uphold it.
4. The complainant was provided with an operation note which recorded information relevant to the procedure. However, this was handwritten and difficult to read. In the note there appear to be two names in the space allotted for the surgeon. One of these names relates to a surgeon

whom the Trust considered to be identifiable. The other doctor's name is illegible. The Trust has explained to the Commissioner that it is unable to identify this doctor.

5. In October 2007 the complainant was sent a transcript of the operation note. However the unidentified doctor's name was not included on it. In the same month the complainant's solicitors wrote to the Trust with regard to an allegation of clinical negligence. The Trust has explained that parties to this matter were in correspondence up until October 2010 when it appears no further legal action was taken.
6. In July 2009 the complainant made a request for information under the FOIA in relation to the identifiable surgeon named on the operation note and other issues associated with his original complaint. The Trust provided responses in August and September 2009.
7. On 29 October 2009 the Trust provided further information to the complainant. It provided a list of people it stated were present in theatre at the time of the operation.
8. On 23 July 2011 the complainant's wife wrote to the Trust asking for further information relating to the operation, including a request for the name of the unidentified doctor. The Trust responded on 14 September 2011 explaining that due to the passage of time it was not possible to identify the name of the doctor.
9. When asked why the name of the unidentified doctor was not included in the list of theatre staff provided previously, the Trust responded that it was not possible to identify the name on the operation note. It clarified that the list provided to the complainant previously was based on a computerised print out of who was in theatre.
10. The Commissioner has considered the issue of whether the Trust holds any additional recorded information identifying this doctor in his decision notice referenced FS50435332. In that decision notice the Commissioner was informed by the Trust that that the print out was taken from its system that was designed to record who was present in theatre during an operation. The Trust explained that this system only recorded the names that had been given to the complainant. The Commissioner considered that, on the balance of probabilities, the Trust held no further recorded information in relation to the name of this doctor. That decision notice related to part of a request for information made under the FOIA by the complainant on 21 September 2011, the remaining part being that of the same date below.

## Requests and responses

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11. On 21 September 2011, the complainant wrote to the Trust and requested the following information:

*'A list of all doctors (qualified and trainees) who were employed by the Trust on (date redacted).'*

12. The Trust responded on 18 October 2011. It applied section 14(1) of the FOIA (vexatious requests) to the request.
13. Following an internal review, the Trust wrote to the complainant on 10 November 2011 in which it upheld its initial decision.
14. On 18 October 2011, the complainant wrote to the Trust and requested the following information:

*'Obtain from Arrowe Park Hospital, the names of all trainees involved in the Deanery Scheme who would have been present in Broadgreen Hospital on (date redacted). Also, the names of trainees and locums you take from any other source, on that day...'*

The complainant also repeated the request of 21 September 2011 for:

*"...[a] list of all doctors (qualified and trainees) who were employed by the Trust on (date redacted).'*

15. On 3 November 2011 the Trust responded to the request. It stated that the Trust had:

*'investigated this route with Arrowe Park Hospital and can now confirm that they do not hold information from their archives that match the name supplied to them by us from your record.'*

16. The Trust also applied section 14(1) of the FOIA to the request for a list of all doctors.
17. On 8 November 2011, the complainant wrote to the Trust and requested the following information:

*'Please supply the following information from Broadgreen Hospital for (date redacted).*

- 1. The number of day cases in each case.*
- 2. Type of operation in each case.*
- 3. Start and end times of each operation.*

4. *Theatre staff present at each operation:-*
    - a) *By name*
    - b) *By qualification*
  5. *[A named doctor]'s movements on that day:-*
    - a) *His timetable from start to finish.'*
    - b) *By theatre/operation.*
    - c) *His operating team in each case.*
  6. *My operation to be included in these answers.'*
18. On 21 November 2011 the Trust responded by stating that it regarded the request as vexatious.
  19. On 11 November 2011 the complainant wrote to the Trust and requested information in the following terms:

*'You maintain that the theatre department does not hold an electronic list for the (date redacted). Strange then that according to [name redacted]'s letter (14.9.11), [name redacted], interim Directorate Manager, provided a computerised print-out of the theatre staff present on that day. Please send me that print-out.'*
  20. The Trust responded to the request on 1 June 2012. It explained that it had confirmed the electronic list did not include the unidentified doctor's name, not that there wasn't an electronic list. The Trust has explained to the Commissioner that it has applied section 14(1) of the FOIA to this request.

## **Scope of the case**

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21. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. Specifically, he complained that the Trust held information which it had not provided to him.
22. During the course of the Commissioner's investigation, the Trust stated that it was relying upon section 14(1) in respect of all of the above requests. The Commissioner therefore investigated whether section 14(1) of the FOIA has been correctly applied to these requests which the complainant had agreed were within the scope of his complaint.

## Reasons for decision

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23. 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”.*

24. The Commissioner’s guidance <sup>1</sup>explains that the term ‘vexatious’ is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (eg vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. When assessing whether a request is vexatious, the Information Commissioner considers the following questions:

- 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?
- Is the request designed to cause annoyance and disruption?
- Does the request lack any serious purpose or value?

25. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.

26. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14(1) to be engaged.

27. In this case the Trust has argued to the Commissioner that communications with the complainant’s wife are of relevance to the consideration of whether the requests are vexatious. It has explained that in its view the complainant’s wife has acted on behalf of the

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of Information/Detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx)

complainant and that her actions should be taken into consideration when deciding whether section 14(1) of the FOIA applies to the requests. From the information available, the Commissioner considers that the complainant and his wife have acted in concert and that communications between the Trust and the complainant's wife may be taken into account when deciding whether these requests are vexatious. This is because the requests both concern the complainant's surgery and issues flowing from that surgery.

*Could the requests fairly be seen as obsessive?*

28. An obsessive request is often a strong indication that the request is vexatious. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been addressed.
29. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive? The Commissioner's published guidance states that although a request in isolation may not be vexatious, if for example if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
30. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
31. In this case the Trust has argued that the requests are obsessive in that they are aimed at identifying an unidentified doctor on the complainant's operation note in order to pursue some kind of clinical negligence legal action or claim compensation, or both. It has explained that, in its view, the context and history of the requests are of particular relevance; that is the complainant's contact with the Trust, his complaints and correspondence and the way in which these were conducted.
32. The Trust provided the Commissioner with a spreadsheet detailing contacts between the Trust and the complainant (or his wife). The Trust also provided copies of correspondence and witness statements of staff to support its arguments.
33. From the information that has been provided to him, the Commissioner considers that the requests may fairly be seen as obsessive. The

requests are placed within a history of complaints and accusations against the Trust. The frequency and intensity of telephone contact by the complainant's wife to the Trust, linked with the focused nature of correspondence and requests are indicative of obsessive requests.

34. The complainant was informed by the Trust on 29 October 2009 of the names of those who had been recorded as being present in theatre at the time of his operation. This did not include the name of the unidentified doctor. On 14 September 2011 the complainant's wife was told that the doctor's name could not be identified because of the passage of time and because the name on the operation note could not be read. However, the complainant continued to make requests to try and identify the individual.
35. It appears to the Commissioner that the complainant has been using the FOIA to attempt to extract any information possible for the purposes of pursuing a personal grievance against the Trust. Initially this focused on the surgeon who was identifiable from the operation note and then shifted to the unidentified individual once the complaint against the identified doctor did not progress. As such, the Commissioner considers the requests to be obsessive.

*Are the requests harassing the authority or causing distress to staff?*

36. The Trust has argued to the Commissioner that the requests have had the effect of harassing it and have caused distress to staff. The Trust has provided witness statements from staff which either directly articulate being harassed or include descriptions of actions which the Commissioner considers may fairly be seen as harassing. It is clear to the Commissioner that staff at the Trust have felt harassed and distressed by the requests in their context and history. He therefore places due weight on this element.

*Would complying with the request impose a significant burden?*

37. The Commissioner considers that complying with the requests themselves may not impose a significant burden. However, he considers that the associated harassment that is likely to accompany complying with the requests may in itself constitute a significant burden, distracting staff from their work as has previously been evidenced to the Commissioner. The Commissioner also considers that complying with the requests would likely result in further requests; such is the obsessive nature of the requests. Again the Commissioner places due weight on this element.



*Is the request designed to cause annoyance and disruption?*

38. Whilst the Commissioner considers that the requests, within their context and history, had the effect of annoying the Trust, he does not consider that there is any evidence of the requests being designed to do this. He also does not find any evidence of the requests being designed to cause disruption to the Trust.

*Does the request lack any serious purpose or value?*

39. The Commissioner notes that the requests are focused around the complainant's surgery and the inability of the Trust to provide the identity of a doctor appearing on the operation note. In this sense the Commissioner does not consider that the requests may be said to lack any serious purpose or value.

40. The Commissioner has considered the issue of the Trust informing the complainant, prior to his requests, that it could not identify the doctor when deciding what weight to place on this factor. He is of the view that weight is to be given to this. However, he is also aware that a distinction may be made between complaint correspondence and requests under the FOIA, although both are relevant to the context and history of a request.

41. Overall, the Commissioner is not of the view that any serious purpose or value that there may be in the requests is capable of outweighing the other vexatious elements which he considers to be present in the requests.

*Conclusion*

42. The Commissioner has noted that the Trust complied with some requests which were made at the same time to those set out above. The Commissioner would note that while section 14(1) provides that a public authority is not obliged to respond to a vexatious request, it does not prevent it from doing so, just as it may choose to respond to a request even when the costs exceeds the limits under section 12 of the FOIA. He would consider that a consistent approach is to be recommended, but this as different from saying that by responding to a certain type of request, the public authority is then under an obligation under FOIA to respond to all other such requests. It is the circumstances of the request which need to be considered and it is in this manner that the Commissioner has decided that the Trust was entitled to rely upon section 14(1) of the FOIA.

The Commissioner considers that in this case there is evidence to demonstrate that the requests can fairly be characterised as obsessive, have the effect of harassing the public authority and its staff and that



complying with the requests would impose a significant burden.  
Therefore he has concluded that the Trust was correct to apply section  
14(1) to the requests.

## Right of appeal

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43. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

44. 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.
45. 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 .....**

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