

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2014

Public Authority: University Hospitals Bristol NHS Foundation Trust

Address: Trust Headquarters
Marlborough Street
Bristol
BS1 3NU

Decision (including any steps ordered)

1. The complainant requested information about an independent inquiry into the University Hospitals Bristol NHS Foundation Trust's (the Trust) histopathology services, carried out in 2010. The Trust cited section 14(1) of the Freedom of Information Act (vexatious and repeated requests) and refused to comply with the request.
2. The Commissioner's decision is that the Trust has correctly applied section 14 of the FOIA and is not obliged to comply with the request.
3. The Commissioner does not require the Trust to take any further action.

Request and response

4. On 14 July 2012, the complainant wrote to the Trust and requested information in the following terms:

"Please provide:

- 1. A copy of the Trust's contract with Verita for managing the Histopathology Inquiry.*
- 2. Copies of any amendments made to the contract during the course of the inquiry.*
- 3. The total amount invoiced by Verita to the Trust under the contract and amendments, itemised to show specific services and*

amounts charged per service.

4. Please tell me where in the Trust's Annual accounts for 2009/10, 2010/11 and 2011/12 the following can be found:

- a. Costs of Jane Mishcon, Margaret Spittle, Michael Summers, James Underwood, Ken Dearden.*
- b. Costs of Source BioScience in relation to the inquiry.*
- c. Costs of Royal College of Pathologists in relation to the inquiry.*
- d. Costs of Professor Peter Furness in relation to the inquiry.*
- e. Costs of Verita in relation to the inquiry*

5. I also want the above costs 4a, 4b, 4c, 4d, 4e itemised to show cost of each split by financial year.

6. I also want the breakdown of cost of each panel member and to know whether they were paid personally, or whether their organisations were paid for their services. For example, was Hailsham Chambers paid for Jane Mishcon's services, or was she paid personally. Was Ken Jarrold paid personally for his services, or Dearden Consulting.

In short, a considerable amount of public money was spent on this inquiry and I want to know exactly what it was spent on and where exactly it went."

- 5. On 7 August 2012, the Trust responded. It refused to provide the requested information and cited section 14(1) of the FOIA as its basis for doing so.
- 6. The complainant had initially told the Trust in August that they did not intend to request an internal review of this decision. On the advice of the Commissioner, the complainant requested a review and the Trust carried one out in November 2012. Its position remained the same but due to an administrative oversight, the Trust did not communicate the result of the review to the complainant until November 2013.

Scope of the case

- 7. The complainant contacted the Commissioner on 21 July 2013 to complain about the way their request for information had been handled.
- 8. The Commissioner has focussed his investigation on whether the Trust has correctly applied section 14(1) to the complainant's request.

Reasons for decision

9. Section 14(1) of FOIA provides that a public authority does not have to comply with a request for information if the request is vexatious.
10. At the time of the complainant's request, the Commissioner's published guidance on section 14 required an authority to take five factors into account when considering whether a request was vexatious: Can it be characterised as obsessive? Does it have the effect of harassing the authority or its staff? Would it impose a significant burden in terms of expense or distraction? Is it designed to cause disruption or annoyance? Does it have any serious purpose or value?
11. The Commissioner's new guidance, published in May 2013, refers to an Upper Tribunal decision that establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
12. The new guidance, to which the Commissioner referred the Trust, suggests that the key question the public authority must ask itself is whether the request is likely to cause disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request.
13. In addition, and in line with the May 13 guidance, in considering the request, the Commissioner has taken into account factors such as intransigence, unreasonable persistence, and frequent and overlapping requests.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that these are of particular significance in this case.
15. The Commissioner recognises that features of this request are comparable to earlier requests which, following complaints to the Commissioner, were found to be vexatious (FS50452727; FS50471080; FS50483042 and FS50481492). However, he has approached this case on its own merits and assessed the Trust's response and reasoning against his May 2013 guidance, with some reference to the guidance that was current at the time of the request.

16. The complainant has appealed against other decisions to the First-tier Tribunal (Information Rights)¹, and more appeals are underway or planned. Tellingly, in their initial complaint to the Commissioner, the complainant asked him to serve a decision notice in this case so that they could appeal against it to the Tribunal (together with case reference FS50452727) – see also paragraph 6. This could suggest a degree of intransigence on the part of the complainant; an unwillingness from the outset to consider whether the complaint could be informally resolved or to reflect on any eventual decision before appealing it.

Is the request likely to cause a disproportionate level of disruption, irritation or distress?

17. The request is the latest in a long series of requests that the complainant has made to the Trust and other local healthcare bodies about the 2010 histopathology inquiry - over 25 composite requests on this matter specifically, comprising over 100 different requests for information. This is in addition to a significant amount of other correspondence and interaction.
18. 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 to be engaged.
19. As in its previous submissions to the Commissioner, the Trust indicated that it has found the scale, scope and volume of the complainant's FOI requests and correspondence an almost disabling burden. It has argued that both operationally and at managerial level, the time taken to process each request is untenable and is a threat to its duties to the wider public and other service users.
20. When seen in the context of the complainant's previous communications, the Commissioner therefore considers that this request adds to the cumulative level of disruption that managing the complainant's persistent and overlapping requests and correspondence has caused the Trust.

¹ [Appeal no: EA/2012/0262](#)

21. Moreover, the Trust has argued that the disruption this request is likely to cause would be disproportionate. The Commissioner agrees with the Trust when it says that this is because the request is indistinguishable from other requests that the complainant has made and which the Commissioner has found to be vexatious. The Trust has noted the subject matter, context and the complainant's dissatisfaction with any information provided to them, in particular.
22. Furthermore, in this case the Trust has already supplied the complainant with information about the costs of the inquiry, in response to a previous FOIA request. In its submission to the Commissioner, the Trust says:

"The fact that information about the costs of the Inquiry is already in the public domain and available to [the complainant] and others is clear from the Tribunal's decision in EA/2012/0262, in which [the Complainant themselves] appears to have provided the Tribunal with material on the costs of the Inquiry (paragraph 1 of the decision)."

Is the impact on the authority outweighed by the purpose and value of the request?

23. As in previous decisions, the Commissioner recognises that the complainant has had genuine concerns about the inquiry into the Trust's histopathology services and that there may be a serious purpose behind the request. He notes however, the Tribunal's comments in the appeal decision EA/2012/0262:

"It is clear that the motive behind the request was to harry NHS Bristol, there was no serious purpose to the request in seeking information and all the documentary evidence shows a systematic pattern of harassing individuals who are unable or unwilling to comply with [their] demands."

24. The inquiry reviewed the performance of histopathology services across the Trust following allegations about misdiagnoses. It considered whether the Trust had taken appropriate action to address those concerns and made recommendations to make sure the Trust provided safe and effective services. The inquiry was made up of a panel of experts and was chaired by a senior barrister.
25. The inquiry presented its findings in December 2010 in a 200 page report that is publicly available. The issues that are the subject of the complainant's request have therefore been subject to external scrutiny through an inquiry that, in turn, could be seen to be reasonable, fair and impartial. The Commissioner therefore considers that there is no

additional public interest or value to the request that would outweigh the impact on the Trust if it were to respond.

26. The Commissioner has looked both at the request on its own merits, and considered the wider history and context. He considers it probable that it is part of the complainant's ongoing campaign against the Trust, that its purpose is ambiguous and that responding to it would impose an unjustified level of disruption on the Trust, out of proportion to any value that the complainant or wider public might derive from the response. The Commissioner is satisfied that the request is vexatious and that University Hospitals Bristol is correct to apply section 14 and refuse to comply with it.

Right of appeal

27. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Pamela Clements
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