

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2015

Public Authority: Imperial College Healthcare NHS Trust

Address: The Bays
South Wharf Road
St Mary's Hospital
London
W2 1NY

Decision (including any steps ordered)

1. The complainant has requested information relating to care of her late mother and the staff involved in providing that care. The Imperial College Healthcare NHS Trust (the Trust) refused the request under section 14 on the grounds that it was vexatious. As it previously refused similar requests under section 14, the Trust relied on section 17(6) to remove the obligation to issue a fresh refusal notice.
2. The Commissioner's decision is that the request is vexatious and that therefore the Trust has complied with its obligations under the Act.
3. The public authority is not required to take any further action in this matter.

Request and response

4. On 5 June 2014 , the complainant wrote to the Trust and requested information in the following terms:

"1: How many Full-time, qualified Oncological Consultant Gastroenterologists (non Locum and excluding Trainees or Ms A) were present/ available to work – during the period 5 January 2009 to 17 May 2009 at St Mary's Hospital? And how many patients like Mum did ICH record as Dr B's patients though they had never spoken, met or had any consultation whatsoever with her as she was a year absent?"

2: On what dates was Dr B – a consultant (absent 26 September 2008 – 5 August 2009) informed (the complainant's mothers) had become her patient as her ICH staff never revealed Dr B was absent for almost one year to family until years after Mum's paralysis and death on 5 July 2009? Fact being staff did not tell us of it and recorded Mum's discharge under absentee, unknown stranger Dr B.

3: On what exact date did Dr B refer (complainant's mother) to Dr C as she informed neither Mum nor family of Dr B's year long absence when her nurses put Mum under her or requests were made for her? And as Dr B and unknown Ms D sent emails criticising us (to support Dr B's inclusion to Mum's team post death – in emails Mr E sent ICO that denied us information) Please provide the date Dr B referred Mum as staff never said she was not there until 8 June 2009 family meeting staff had arranged for us to meet her. Provide her fax, emails she sent.

3a: On what date/ What did Dr B record of Mum's addition onto her patient list to staffs: Service Chief Mr F, Mr G, Dr C & Ms A, Ms D, Ms H, Mr I, Ms J complaint staff or any others assisting in the activity of failure to provide Mum all information, help or care? Was the only date she records Dr C as Mum's doctor 23 December 2009 at 11:42? What communication did she send specifically about (the complainant's mother) before 23 September 2009?

3b: On what exact date did Ms D introduce herself into ICH records sent on Mum and wards of nurses who concealed all information from us? To which nurses – what dates and what was she recorded as communicating with them on this matter? Had she instructed in record writing / emailed nurses FOI, Complaints/ Ms J prior to sending critical emails constructed in a study on (the complainant's mother) that Dr B mentioned?

3c: Who are Mr K and Ms L as listed in email? In an investigation on (the complainant's mother) what were their roles and what were they employed for at the ICH?

4: On what date did staff/SpR contact Dr C to attend Mum prior to/ post her injury 12 April 2009? (as staff put Mum under Dr B – sign over her bed and recorded Dr B as attending consultant so as doctor I phoned her/ secretary Ms M daily 3 weeks through May to help our paralysed Mum; with staff calling too) Also provide records pre 17 May to 5 July 2009 of staff contacting Dr C.

4a: On what dates did consultant Dr C (who was part of Prof N's team at St Mary's Hospital) – go on Annual Leave and when did she return from Annual Leave? As Dr B declared Mum's doctor, that information should have been given to us. What was the date/ time length/

duration Dr C was absent when mother (her patient) was supposed to be under her care as Dr B stated in email? We require information; dates of commencement/absences in her contract times.

Prof N never received documentation from Dr C of this patient's condition. And he recorded that he had none. What did staff record of team's failure to provide any information on this patient? We require explanation in his words or emails/ faxes he sent requesting info on his patient to Dr C, Medical Records team or other parties regarding Mum after he told his colleagues "I have no documentation"

5: On what date did Prof N receive documentation he stated he did not have in the 15th MAY 2009 letter to referrer Dr O? We require fax/ all communications, emails to/ from Dr O/ or any / all colleagues on the matter. (This was documentation on Mum – of her hospitalisation, condition and DVT which he should have received in April BUT for Dr C being on her Annual Leave too. Mum & I told him of her condition/ Hospitalisation on 8 May Clinic Date and he was completely ignorant. He asked 3 team members, I quote: "Why was I not told this?")

6: We require the full names and registration numbers of all SHO's and nurses inc. trainees assigned to/ recorded as treating (the complainant's mother). Impossible to read on medical records is the name of one such SHO who identified as Dr P on 23 June 2010. Records say that all staff should write clearly and in Block capitals. Dr P – fled Mother's bedside stating "I'm just covering for 2 other people and I don't want to get involved". We require information because of many acts like this –"

5. The Trust responded on 9 July 2014. It stated that it could not respond to the request. It went on to explain that the Trust had previously relied upon the exemption provided by section 14(1) of FOIA – vexatious requests, in respect of a number of previous requests for information about the treatment of the complainant's mother. Therefore section 17(6) of FOIA removed the obligation to issue a refusal notice in response to a new request for information on the same subject.
6. To clarify the interaction between section 14(1) and 17(6), when a public authority refuses a request a public authority is normally required to issue a notice explaining its grounds for doing so. This is a requirement of section 17. However section 17(6) removes that obligation where the request is being refused on the basis that it is vexatious and the public authority has already informed the applicant that a previous request has been refused on those grounds. It is clear therefore that the Trust was refusing the complainant's latest request on the basis that it too was vexatious.

7. In the circumstances the Trust declined to offer an internal review.

Scope of the case

8. The complainant contacted the Commissioner 30 July 2014 to complain about the way her request for information had been handled. She explained that her request of the 5 June 2014 was not a repetition of an old request or complaint, that it was a new request and therefore the Trust should not be allowed to simply classify her new request as being vexatious.
9. The Commissioner considers that the issue to be determined is whether the Trust was correct to find that the complainant's latest request was vexatious.

Background

10. Between August 2009 and July 2010 the complainant made 26 requests to the Trust for information which collectively contained 200 questions about the treatment of her late mother. The Trust responded to some of these requests but ultimately refused to comply with the last 19 requests on the basis that they were vexatious under section 14(1) of FOIA. The Trust issued a refusal notice to this effect.
11. This led to a complaint to the Commissioner, who issued a decision notice on the 22 March 2011 (case reference FS50276199). The decision notice upheld the Trust's application of section 14(1).
12. The complainant has previously been supplied with a full copy of her mother's medical records held by the Trust.

Reasons for decision

13. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
14. The term 'vexatious' is not defined in the Act but based on a number of Tribunal decisions the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. It is important to recognise that in applying section 14 it is the request that must be considered rather than the person making the request. A public authority cannot simply refuse

a new request on the basis that it has classified previous requests from the same individual as vexatious.

15. However in considering whether the current request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, the context and history in which the request was made can be a major factor in determining whether the request is likely to have such an impact. Therefore the Commissioner will take account of the other requests that the complainant has made together with her previous dealings with the Trust.

Purpose and value of the request

16. In assessing whether any disruption, irritation or distress caused by complying with the request is justified and proportionate it is important to consider the purpose and value of the request. If a request does not have any real purpose it is more likely to be deemed vexatious, where as a public authority would be expected to tolerate a greater level disruption etc if there was a real value in responding to the request.
17. The complainant is not satisfied with the treatment her mother received from the Trust and it appears she believes this contributed to her death. She has therefore been in protracted dialogue with the Trust in the past and submitted a great many information requests in an attempt to better understand the circumstances of her mother's death and to scrutinise the quality of the care she received. The Commissioner recognises that this is a serious purpose.
18. The complainant's latest request seeks information on members of staff who were either involved in the treatment of her mother or in dealing with her subsequent complaints and information requests, together with confirmation of the dates of their involvement. The Commissioner has tried to clarify with the complainant the full nature of her complaint. Although it is not entirely clear, from her correspondence with the Commissioner, he gathers that the complainant does not accept that the information she has already been provided with is accurate, nor does she accept that the information provided to those investigating the complaints she made following her mother's death, including the information provided to the Commissioner by the Trust at the time he investigated her previous freedom of information complaint, was accurate. It appears that, in part, her recent request seeks information she believes would reveal whether certain individuals were actually in a position to have either generated the documents the Trust have provided her with, or to have commented on the treatment of her mother in response to complaints.

19. This being so her recent request links back to the underlying purpose of the complainant to examine and challenge the level of care received by her mother.
20. In respect of the underlying purpose of the request, to examine the care received by the complainant's mother, the Trust has explained that she has made a number of complaints to it regarding the treatment provided, the attitude of the staff involved and the information she and the family were provided with during her mother's treatment. The complaints were dealt with personally by the head of the complaints department whose title is now the Associate Director for Service Quality and Complaints. The enquiries he conducted in response to those complaints involved a review of documents and it is understood that between 15 and 20 members of staff were interviewed. The subsequent reports were submitted to the Trust's chief executive and when their findings were appealed the investigations were reviewed. The investigations also involved staff from human resources since the nature of complaints were such that, had they been proven, they would have resulted in disciplinary action. None of the complaints were upheld. The significance of this is that the complainant has already been given the opportunity to pursue her concerns through all internal channels and her complaints have not been upheld.
21. Furthermore the Trust has advised the Commissioner that the complainant has made a complaint to the Parliamentary and Health Service Ombudsman and that complaint was not upheld. She has also made a number of complaints against particular individuals to their professional bodies for example the General Medical Council. Again these complaints were not upheld.
22. The Commissioner considers that holding a NHS Trust to account for the treatment of a patient is a serious purpose. This is especially so when the patient died. However as these concerns have already been extensively investigated, both the Trust itself and external, independent regulators, the Commissioner considers that there is no longer a serious value in pursuing them further.
23. In respect of the complainant's concerns regarding the accuracy of information provided to the Commissioner during his investigation of her previous freedom of information complaint, the appropriate means of challenging the Commissioner's findings would have been to appeal the notice at the time it was issued. The times allowed for making such appeals has long since passed.
24. During his current investigation the Commissioner asked the complainant to confirm whether her complaint was in respect to how the Trust had dealt her request of 5 June 2014, or whether the references in

her correspondence to the inaccuracy of the emails supplied to him during his investigation into her previous request was in fact an attempt to challenge the decision notice issued in that case. From her responses the Commissioner understands that the complainant was concerned with the Trust's failure to provide the information she requested on the 5 June 2014. Since she appears to accept that she cannot challenge the finding of the earlier decision notice, but appears to be seeking information that she believes would cast doubt on its findings, it is not clear what meaningful purpose her new request has in relation to that notice.

25. If it is that she seeks information which she believes would undermine the credibility of the findings of all the previous enquiries that have been initiated in response to her past complaints, then again the Commissioner would argue that those complaints have already been fully investigated.
26. In light of the above the Commissioner finds that although there was initially a serious purpose behind the complainant's desire to scrutinise the treatment provided to her mother the fact that she has already pursued those concerns through all available channels means there is little value to her current request.

Unreasonable persistence

27. One indication that a request is vexatious is that it reflects an unreasonable persistence in pursuing an issue. As already discussed the complainant has pursued a range of complaints, through a number of different avenues, in relation to the care of her mother. Her concerns have been thoroughly investigated and the Trust and some of its staff have been subjected to independent scrutiny. The Commissioner is satisfied that in making her request of the 5 June 2014 the complainant is seeking to reopen these issues. Furthermore a number of the questions posed in the recent request seek information that, if it existed, would be held in the medical records which she has already been provided with.
28. The Trust has advised the Commissioner that it has not received any communication from the complainant since the Commissioner served his previous decision notice in March 2011. The Commissioner has considered what bearing this has on whether the new request can be deemed vexatious.
29. When raising her new complaint with the Commissioner the complainant explained that her request was made after she had re-examined the information previously provided by the Trust and discovered what she

describes as 'inaccurate emails'. She believes these emails would have been provided to the Commissioner during his previous investigation.

30. If a request was triggered by the discovery of new evidence that could genuinely cast doubt on whether a previous investigation by the Commissioner had reached the correct conclusions it is less likely that the request could be considered vexatious. Similarly if the discovery of the emails called into the question the integrity of the Trust's investigations into the complainant's concerns over the care her mother received, it is again less likely that the request could be deemed vexatious. Furthermore if there had been no communication between the complainant and the public authority in the intervening period, this would indicate the complainant had been prepared to accept the previous outcomes of those investigations or at least accept that she had exhausted all possible avenues for challenging those outcomes, until the discovery of the 'inaccurate emails'.
31. The complainant has provided the Commissioner with a sample of the evidence she has discovered and which she believes shows that information provided by the Trust is inaccurate. Having considered the actual email itself the Commissioner can find nothing to suggest that it is itself inaccurate or that it has been in some way fabricated. The email, dated 23 December 2009, is from the consultant under whose name the complainant's mother was admitted and appears to be in response to enquiries made as a result of a complaint following the death of the complainant's mother. The consultant explains in the email that she was absent during the period the mother was treated and that her locum oversaw the mother's treatment.
32. The Trust has informed the Commissioner that it has explained the role played by the consultant under whose name the complainant's mother was admitted on a number of occasions and why that doctor's name does not appear in the mother's medical records which she has been provided with.
33. The Commissioner is satisfied that, based on the sample provided by the complainant, the information she reviewed and which triggered her latest request does not amount to credible evidence that the Trust has either provided her with inaccurate information, relied on inaccurate evidence when investigating her complaints or supplied the Commissioner with inaccurate information when investigating the Trust's handling of her previous requests. The Commissioner accepts that the complainant genuinely believes there are grounds for re-examining the Trust's treatment of her mother but these grounds are unsubstantiated. In the absence of any credible reason for attempting to reopen these issues the Commissioner considers that the request indicates an

unreasonable persistence in pursuing matters that have already been thoroughly investigated.

34. Although there has been a gap of five years between the complainant's recent request and her previous ones, the Commissioner considers that there is a realistic prospect that if the Trust complied with this request, more would follow together with further attempts to reopen complaints about the treatment of her mother. The language of the new request is not overtly aggressive but its overall tone is to harangue the Trust and in places is accusatory, for example in question 3a she names a number of individuals who she considered assisted in " ... the activity of failure to provide mum with all information, help or care ...". This on its own is not sufficient to render the request vexatious, but when considered in the context of the complainant's previous requests and dealings with the Trust would deepen the harassing nature of the latest request.
35. In conclusion the Commissioner finds that the issues to which the requests relate, the Trust's treatment of the complainant's late mother, have all been thoroughly investigated in the past. The Commissioner is therefore satisfied that there is little value in continuing to pursue these matters and that the complainant's persistence in doing so renders the request vexatious. The Trust is therefore entitled to refuse the request under section 14(1) and the Commissioner does not require it to take any further action in this matter.

Right of appeal

36. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

37. 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.
38. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF