

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 9 November 2022

Public Authority: The Christie NHS Foundation Trust
Address: Wilmslow Road
Withington
Manchester
M20 4BX

Decision (including any steps ordered)

1. The complainant has requested information associated with a car parking planning application. The Christie NHS Foundation Trust initially handled the request under FOIA and refused the request as vexatious under section 14(1). Its final position is that the request is manifestly unreasonable under regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is as follows:
 - The complainant's request is manifestly unreasonable under regulation 12(4)(b) of the EIR, by virtue of being a vexatious request. The public interest favours maintaining this exception.
3. The Commissioner does not require The Christie NHS Foundation Trust to take any corrective steps.

Request and response

4. As part of a longer piece of correspondence, on 16 November 2021 the complainant wrote to Christie NHS Foundation Trust ('the Trust') and requested information in the following terms:

"... Given that the restoration of residential amenity lay at the heart of plans that involved the building of PA 117847, what plans, if any, does the Trust now have for exploring the issue of amenity with its neighbours located around the site of the car park?"

5. The Trust responded on 25 November 2021. It refused the request which it considered to be vexatious under section 14(1) of FOIA. But the Trust did "once again" direct the complainant to its 'Neighbourhood Forum'.
6. The Trust provided an internal review on 5 January 2022. It upheld its original position and provided more detail on why it was relying on section 14(1). The Trust referred to the complainant's 'unreasonable persistence' (because they continued to explore matters covered by planning legislation), 'intransigence' (noting that it had offered to meet the complainant and that they were aware of its Neighbourhood Forum) and the 'scattergun' and 'futile' nature of the request (indicating that the complainant was aware that information about the planning application was already in the public domain).

Scope of the case

7. The complainant contacted the Commissioner on 25 January 2022 to complain about the way their request for information had been handled.
8. As a result of the complaint to the Commissioner the Trust reconsidered its response to the request and agreed with the Commissioner that the request is for environmental information, and the Trust should have handled it under the EIR, and not FOIA. The Trust confirmed it was relying on regulation 12(4)(b) of the EIR, which is the equivalent of section 14(1) of FOIA.
9. The Commissioner's investigation has therefore focussed on whether the Trust can rely on regulation 12(4)(b) of the EIR to refuse to comply with the complainant's request, and the balance of the public interest.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable request

10. Under regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.

11. Unlike section 14(1) of FOIA, regulation 12(4)(b) is subject to the public interest test under regulation 12(1)(b).
12. The Trust considers that the complainant's request is manifestly unreasonable because it is vexatious (rather than because the costs associated with complying with it are too great). Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in **Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC)**, namely:
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
14. The Trust has first provided the following context and history. The focus of the request is a planning application (ref: 117847/FO/2017), approved by Manchester City Council. The application was to create a multi-storey car park and reconfigure the current car park space to ease patient access when attending clinic appointments includes access roads, drainage, parking, fences and external lighting.
 - The lighting design is referenced within the main body of the application and points the reader to the Environmental statement.
 - Within those documents there is a clear assessment of light obtrusion.
 - These documents remain available on the Manchester City Council Planning online portal.
15. The Trust established a Neighbourhood Forum in May 2012 to provide an opportunity for residents and elected representatives to engage and communicate directly with the Trust Executives about its role and impact on the local community. The forum is chaired by Councillor Andrew Simock, is accessible to all members of the public with terms of reference and papers published on the Trust website¹. During the

¹ <https://www.christie.nhs.uk/about-us/our-future/our-developments/neighbourhood-forum>

COVID-19 pandemic the forum went online as it was viewed as a priority meeting that should be maintained during the pandemic.

16. Moving to this request specifically, the Trust's submission goes on to advise that between July and September 2017, the complainant submitted 14 requests for information, plus another three follow up requests for information. At the time, the Trust responded to six of these requests, but relied on the appropriate cost/time limit exemption under section 12 of FOIA in respect of the others.
17. Between March 2018 and June 2021, the complainant submitted a further 15 requests for information, plus another two follow up requests. Again, at the time the Trust responded to 13 of these requests but did not respond to any outstanding requests on the grounds that they were vexatious under section 14 of FOIA.
18. In addition to the above requests dealt with by the Trust's FOI team, the Trust says it is aware of 25 requests for information from the complainant received by its Facilities and Estates and Communication teams.
19. In total therefore, the complainant had submitted at least 59 separate requests for information prior to them submitting the request under investigation in this notice. The Commissioner understands that all these requests, like the current request, concerned the planning application in question.
20. It was in light of the above context and history that the Trust took the decision that the request in this case was manifestly unreasonable by way of being vexatious. The Trust says it came to this decision as a result of considering the request, as it outlined in its correspondence to the complainant of 25 November 2021, and again following its internal review on 5 January 2022.
21. The Trust has gone on to discuss the themes identified by the UT, discussed above, as follows:
 - **Value or purpose of the request:** the Trust has acknowledged that the complainant has a right to request information about issues impacting the local community that arise from actions the Trust takes. The Trust says it prides itself on its transparency in respect of such matters.

The Trust goes on to say that it does not believe, however, that responding to this request is beneficial to itself, the complainant or the wider community. The Trust notes the existence of the Neighbourhood Forum which was set up for residents to attend to discuss with other residents any issues that may be impacting the

local community. Given that there is such a platform, the value or serious purpose of the request is, the Trust says, significantly reduced. This is because the majority of the information that has been requested [the Commissioner understands the Trust to mean that has been requested previously] is already in the public domain, or otherwise accessible, via the Neighbourhood Forum.

The Trust also reiterates that the complainant was offered the opportunity to meet the Executive Director of Finance and Business Development but did not take up this opportunity. The Trust considers that the complainant's continual challenges and requests for information are without any clear or logical basis, which further reduces the value or serious purpose of their request.

- **Motive:** the Trust says it appreciates the merit in the complainant wanting information on changes being made. But it questions the motive for the request and considers it may not be a genuine attempt to obtain recorded information.

The Trust says that many of the requests it has received from the complainant (including the current request) relate to issues which are comprehensively addressed by applicable planning procedures, the Neighbourhood Forum and other communications by the Trust. The availability of the forum and the offer to meet with the Executive Director of Finance and Business Development have been provided to the complainant but they have declined to engage with the Trust in this way.

As the Trust set out in its internal review response, it considers the complainant is demonstrating intransigency and entrenchment of their position and an unwillingness to engage with the Trust other than through their numerous requests for information under FOIA/the EIR.

- **Burden:** The Trust notes that this relates to the amount of work involved in dealing with a request and whether it imposes an unreasonable burden. The Trust has reiterated that prior to the request under investigation, it had previously received at least 59 requests on broadly the same subject. These requests are causing a significant cost and time expenditure for the Trust.

The Trust says that there are multiple teams involved in dealing with the requests (FOI, Facilities and Estates and Communications). These teams, and the Trust generally, have finite resources at their disposal. The requests take an

unreasonable amount of resource, especially given that the information is largely available in the Neighbourhood Forum.

The requests are also being received through a number of channels causing irritation and disruption to operational services. This is unnecessary and unjustified and further increases the unreasonable burden on the Trust.

The Trust has confirmed that complying with the request would be detrimental to it as it would amount to a duplication of work. This is because information has already been released through the planning process, the Neighbourhood Forum and other communication channels. Complying with this request at this point also has the potential to open the floodgate to other requests which should reasonably be dealt with at public forum level instead of on an individual basis. Dealing with this request (and the numerous other similar requests) risks diverting finite resources from the process of communicating and disseminating information to the local community as a whole.

The Commissioner's conclusion

22. The complainant may well have an entirely valid concern about the car parking development, as seems to be the case from their complaint to the Commissioner. Despite the existence of the Neighbourhood Forum, their initial requests to the Trust about that matter may therefore have had some value and purpose. However, four years after their first request and approximately 60 requests about the same subject later, in the Commissioner's view what value the original request(s) may have had, had diminished considerably. The Trust offered to meet the complainant to discuss their concerns; an invitation the complainant did not take up. The complainant is also aware of the Neighbourhood Forum as the forum through which their concerns can be explored. And they are aware of information about the planning application in question that is published on the Council's planning portal.
23. It would not be unreasonable to conjecture that the complainant, being dissatisfied with the Trust's car parking plans, continued to submit information requests to the Trust in order to distract the Trust and to cause a nuisance. However, only the complainant knows their motive for submitting an unusually high volume of requests to the Trust over a number of years, rather than meet with Trust representatives or its Neighbourhood Forum.
24. Whatever their motive, the Commissioner is satisfied that, having dealt with a series of requests on the same subject over a four year period, at the point of the current request the Trust was entitled to draw a line and

rely on regulation 12(4)(b) to refuse to comply with that request. Such value as the request may have had was not proportionate to the cumulative burden that complying with it would cause the Trust – both to comply with that request and to deal with future requests that, evidence suggests, would surely have followed. The Commissioner has considered all the circumstances and is persuaded by the Trust's submission, which addresses all the relevant factors. He has decided that the Trust was justified in applying regulation 12(4)(b) of the EIR to the request at the point that it did. The Commissioner has gone on to consider the public interest test associated with that exception

Public interest test

Public interest in complying with the request

25. The Trust acknowledges that there is a public interest in transparency regarding the car parking development and the impact on the local community.

Public interest in maintaining the exception

26. The Trust has indicated that there is stronger public interest in being able to focus its finite resources on communicating and disseminating information about the development to the local community as a whole, through the Neighbourhood Forum and other channels, rather than by complying with one individual's information requests.

Balance of the public interest

27. In the Commissioner's view there is minimal, if any, public interest in the Trust complying with this request at the point the Trust received it. The public interest in transparency about the car parking development is met more than satisfactorily through planning information already in the public domain (such as on the Council's planning portal), the Trust's Neighbourhood Forum and the Trust's other communication channels. The Commissioner considers that the public interest clearly favours the Trust being about to focus its resources on communicating information about the car parking development through established channels such as the Neighbourhood Forum.
28. Not only would dealing with the complainant's request continue to divert the Trust's resources (across a number of teams) from communicating about the development in a more considered and targeted way (eg through the Neighbourhood Forum), complying with the request would also continue to divert the Trust's teams from their other wider, day to day duties. The Commissioner is satisfied that the public interest favours maintaining the regulation 12(4)(b) exception so that the Trust can focus its resources on more important matters.

Right of appeal

29. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Cressida Woodall
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