Freedom of Information Act 2000 (FOIA)

Decision notice

Date:	**TBC**
Public Authority:	**Dr Julian Medical Group Limited**
Address:	**The 1921 Building East Malling Business Centre** **New Road** **East Malling** **Kent** **ME19 6BJ**

Decision (including any steps ordered)

1. The complainant has requested from Dr Julian Medical Group Limited (the public authority) the name of a therapist's professional membership body. During the course of the Commissioner's investigation, the public authority applied section 14(1) of FOIA (vexatious request) to refuse the request.

2. The Commissioner's decision is that in failing to provide a response to the request that complies with section 1 of FOIA within 20 working days, and also in failing to issue a refusal notice that is compliant with section 17(1), the public authority has breached section 1(1), 10(1) and 17(1) of FOIA. The public authority is also not entitled to rely on section 14(1) in refusing to provide the requested information.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

    - Provide the requested information or issue an appropriate refusal notice which does not rely on section 14(1).

4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as an contempt of court.

Background

5. The complainant attended an assessment appointment by 'live messaging' with a therapist from the public authority on 26 October 2022. The assessment was requested by 'Inclusion Thurrock', which, is part of Midlands Partnership University NHS Foundation Trust (the Trust).

6. On 18 June 2023, the complainant wrote to the public authority and made a complaint about the therapist being biased and misquoting / misrepresenting information in the assessment 'clinical contact summary' (notes).

7. On 6 July 2023, having completed its investigation, the public authority wrote to the complainant with its decision – that the complaint is not upheld but agreed to make some rectifications to the notes. Dissatisfied with its decision, the complainant replied requesting additional rectifications to the notes and asked for a 'further review' of the investigation. The public authority replied stating it will provide 'no further input' and that the Trust is the lead investigator.

Request and response

8. On 7 July 2023, the complainant wrote to the public authority and (within the context of their enquiry concerning how to escalate their complaint) requested information in the following terms:

> "Please could you confirm which professional association [redacted] is registered to. I wish to take my concerns about my assessment appointment and the subsequent clinical notes and Clinical decisions with them.."

9. On 9 July 2023, the public authority replied only in relation to the wider complaint. It said that the complaint was not upheld, how to escalate the matter, and said that it will not provide 'any further input'.

10. The complainant replied to the public authority on the same day expressing dissatisfaction. They explained that they wished to refer their concerns about [redacted] to their professional membership body, and requested the same information again. The public authority replied on the same day and said "This request for information is denied".

11. On 15 December 2023, the complainant wrote to the public authority again expressing dissatisfaction with its handling of the request.

Scope of the case

12. On 15 December 2023, the complainant contacted the Commissioner to complain about the way their request for information had been handled.

13. During the course of the Commissioner's investigation, the public authority confirmed that it stopped responding to all correspondence from the complainant on 14 December 2023. It said that it had notified the complainant on 10 July 2023 that it had applied section 14(1) to refuse the request.

14. The Commissioner notes from the evidence provided that in response to a separate and further request from the complainant (for a different individual's professional body membership details) made on 10 July 2023, the public authority responded on the same day applying section 14 to refuse that request. He notes that the response does not cover the request of 7 July 2023 because it is part of an email chain relating to the request of 10 July 2023, the exemption was only applied after receiving that request, and states "**This request** is denied under Section 14 of the Freedom of Information Act." meaning the exemption was only applied to that one request.

15. The public authority confirmed during the course of the Commissioner's investigation that it also wished to apply section 14(1) of FOIA to refuse the request of 7 July 2023 and provided a submission.

16. The public authority also said that since making the request, the complainant has acquired the name of the therapist's professional membership body by other means, made a complaint to it about the therapist / assessment, and received its decision - not upholding their complaint. The complainant then contacted the public authority and the Commissioner on the same day (expressing dissatisfaction with the handling of their request for information).

17. The Commissioner notes that the public authority failed to issue a response to the request that is compliant with section 1 of FOIA at the time the complaint was raised with him (see below).

18. The Commissioner acknowledges that the complainant raised their complaint to him after receiving the BABCP's decision. This does not however circumvent the public authority's obligation to provide the complainant with a response to their request (for information the complainant did not hold at the time of making the request) that is compliant with section 1 of FOIA.

19. The Commissioner has therefore considered whether the public authority was entitled to rely on section 14(1) to refuse the request at the time the request was made.

Reasons for decision

20. Section 14 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."

21. The Upper Tribunal considered the issue of vexatious requests in Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)1. It commented that 'vexatious' could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure.' The Dransfield case considered four broad issues: the value or serious purpose of the request, the burden imposed by the request (on the public authority), the motive of the requester, and harassment or distress of and to staff.

22. The Upper Tribunal cautioned that these considerations were not meant to be exhaustive. It emphasised that:

> "…all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA"

The complainant's position

23. The complainant said that they do not consider the request to be vexatious because the public authority states under point 5 (5.1 – 5.4) in the 'terms and conditions' section of its website that, all therapists are members of professional bodies, details of their professional membership should be available on the therapist's profile on its website, and checking this information is the responsibility of the public authority.

24. The complainant said that the 'BABCP Standards of Conduct, Performance and Ethics' states that members (the therapist) "must tell people who use your service how they can complain about you and your practice to BABCP and any other regulatory bodies you are accountable to."

The public authority's position

<u>Value and serious purpose</u>

25. The public authority has not offered any arguments about the value and serious purpose of the request at the time the request was made. It has however said that the since making the request, the complainant has acquired the information from another source, that they have raised a

complaint to the therapist's professional membership body, and that they have received its decision. This information is considered further below.

Burden imposed by the request

26. The public authority said that email communication from the complainant in relation to their complaint about the therapist / assessment has been 'excessive over the past year' and to date a 'significant amount of time' has been dedicated to support them, including resolving the initial complaint in full.

27. The public authority said that, the complainant has raised three complaints with it about the therapist / assessment. It said that between 6 and 10 July 2023 it received six emails from the complainant. Over these emails the complainant said that they were dissatisfied with the outcome of the complaint / asked how to escalate the matter, asked for rectifications to be made to the notes, and requested the name of the therapist's and the complaint investigator's professional membership bodies.

28. The public authority said that no new information had been received about the therapist / assessment that would have changed the outcome of the original complaint, and that the objective of the assessment had been successfully served. The public authority advised the complainant that their complaints were not upheld, and any further rectification requests relating to the notes and challenge to the complaint outcome would need to be addressed by the Trust.

29. On 14 December 2023, the Chief Executive Officer of the public authority wrote to the complainant advising them that it will not be engaging with them any further and asked them to refrain from contacting it. In March 2024, the public authority 'blocked' inbound communications from the complainant.

30. The public authority said that any further communication and engagement with the complainant would likely result in further complaints that would only serve to 'perpetuate' and not resolve their feelings. This would increase administrative burden on it, the NHS and other public authorities.

31. The public authority said that there is a 'risk of burden to external public authorities' because the evidence suggests that the complainant would be likely to make repeated and duplicate complaints to them.

Motive of the requester

32. The public authority has not offered any arguments about the motive of the requester at the time the request was made.

Harassment and distress

33. The public authority offered information about the complainant and healthcare care professionals that has not been reproduced in this decision notice. In this case, it said that the complainant has made three complaints with it, two complaints with the Trust, and one complaint with the BABCP about the therapist / assessment. It said that the complainant has also said that they intend to pursue a complaint with the Parliamentary and Health Service Ombudsman.

34. The public authority said that staff have reported feelings of 'distress and harassment' because of "persistent and relentless" contact from the complainant that was "at times hostile and aggressive in tone" and that this created a "significant impact to service delivery, and by effect to the other services users … the health and wellbeing of all other service users was considered paramount in this decision". This includes, the therapist, their clinical supervisor, two members of the customer service team and the Head of Clinical Services.

35. The public authority said that it cannot have any further direct correspondence with the complainant because this would likely result in further complaints.

The Commissioner's position

Value and serious purpose

36. The Commissioner has considered the value and serious purpose of the request at the time the request was made.

37. The Commissioner notes the complainant's views. He also notes that under point 32 of the 'Frequently Asked Questions' section of the public authority's website, it states that if service users wish to make a complaint about a therapist, they should, raise a complaint with the public authority in the first instance. If they remain dissatisfied then the 'last resort' is to contact the professional membership body of the therapist and raise a complaint 'at that level'. It goes on to say "All our therapists are members of a Professional Membership Body and this information is included within their profile".

38. The Commissioner notes that the complainant in this case initially made a complaint about the therapist / assessment to the public authority, dissatisfied with its response, the complainant then wrote to it requesting the name of the therapist's professional membership body in order to make a complaint to it about the therapist / assessment.

39. It is therefore the Commissioner's view that there is a clear objective public interest in the withheld information relating to accountability and individuals who have a concern about a therapist, are dissatisfied with

the public authority's response to their concern, and wish to raise the matter with the therapist's professional membership body in line with the public authority's published complaints process.

Burden imposed by the request

40. The Commissioner has considered the burden imposed by the request on the public authority at the time the request was made.

41. The Commissioner notes the public authority's view that email communication from the complainant has been 'excessive over the past year', and that any further engagement with the complainant would only serve to 'perpetuate' and not resolve their feelings. He however also notes that it has not offered any estimate of the time it has spent specifically dealing with the portion of these communications up to the date of the request.

42. The Commissioner has reviewed the evidence provided by the public authority. He notes the communication includes; emails from the complainant seeking clarification about the assessment and next steps, rectification requests relating to the notes, a complaint about the therapist / assessment (in accordance with its complaints procedure), and a complaint about the investigation. He also notes that in its response to the complaint (dated 6 July 2023), the public authority advises the complainant to contact it should they have any questions about the outcome.

43. The Commissioner notes that there is one reference made to the complainant contacting the public authority's admin team "numerous times" to speak with the therapist (after being advised the wellbeing service will be in contact with them). However, they then emailed the therapist requesting a copy of the assessment. He also notes that no evidence has been presented demonstrating the complainant using a "hostile" and "aggressive" tone, or the impact this has had on the wellbeing of staff and service users at the time the request was made.

44. The Commissioner considers the complainant's contact with the public authority reasonable in the circumstances of an individual who underwent an assessment with a therapist, was dissatisfied with the therapist / assessment, and the subsequent investigation.

45. The Commissioner also notes that, the public authority itself directed the complainant to contact the Trust and the therapist's professional membership body (in its communication with the complainant and on its website) if they were dissatisfied with the outcome of the complaint. Moreover, the BABCP's website invites individuals to make a complaint to it about therapists. He notes that in such circumstances the public authority would only be required to communicate directly with these bodies about any enquiries they may have and not directly with the

complainant. The complainant also appears to have raised their complaint with the BABCP after the date of the request.

46. The Commissioner is therefore not convinced that processing the request would impose an unreasonable burden on the public authority that outweighs the value and serious purpose of the request at the time it was made.

Motive of the requester

47. The Commissioner has considered the motive of the requester at the time the request was made.

48. The Commissioner notes that the complainant made a complaint about the therapist / assessment to the public authority on 18 June 2023. The public authority investigated the matter and responded to the complainant – not upholding the complaint on 6 July 2023. Then on 7 July 2023 the complainant requested the name of the therapist's professional membership body in order to raise a complaint about the therapist / assessment.

49. The evidence provided shows that the complainant made it clear to the public authority that they were not satisfied, and wished to contact the therapist's professional membership body about the matter. He also notes that the public authority's online complaint's process states that such matters can be escalated to the therapist's professional body, and that information about their professional membership body should be available on the therapist's profile.

50. It is therefore accepted that there is a legitimate motive for the complainant's request in this case.

Harassment and distress

51. The Commissioner has also considered any harassment and distress by the complainant at the time the request was made.

52. In regard to distress as a result of "persistent and relentless" contact from the complainant. The Commissioner has reviewed the evidence provided. He notes the communication from the complainant up to the date of the request includes; emails from the complainant seeking clarification about the assessment and next steps, rectification requests relating to the notes, a complaint about the therapist / assessment (in accordance with its complaints procedure), and a complaint about the investigation. He also notes that in its response to the complaint (dated 6 July 2023), the public authority advises the complainant to contact it should they have any questions about the outcome.

53. The Commissioner notes that there is one reference made to the complainant contacting the public authority's administration team "numerous times" to speak with the therapist (after being advised the wellbeing service will be in contact with them). However, they then emailed the therapist requesting a copy of the assessment. He also notes that no evidence has been presented demonstrating the complainant using a "hostile" and "aggressive" tone.

54. The Commissioner also notes that the public authority advised the complainant (in its response to their complaint and through the complaint's process on its website) that if they are not satisfied with the outcome of the complaint, to escalate the matter to the Trust and the therapist's professional membership body. He also notes that as those bodies may contact the public authority with enquiries, it would not be required to communicate directly with the complainant in relation to those matters.

55. The Commissioner considers the complainant's contact with the public authority reasonable in the circumstances of an individual who underwent an assessment with a therapist, was dissatisfied with the therapist / assessment, and the subsequent investigation.

56. The Commissioner therefore considers that the value and purpose in the requested information outweighs the burden of complying with the request imposed upon the public authority at the time the request was made and is not satisfied that it was entitled to refuse the request on the basis of section 14 of FOIA.

Procedural matters

57. In failing to provide a response to the request that complies with section 1(1) of FOIA within 20 working days, and in failing to issue a refusal notice that is compliant with section 17(1), the public authority has breached section 1(1), 10(1) and 17(1) of FOIA.

Other matters

58. The Commissioner notes from the evidence provided that, the public authority appears to have attempted to apply section 14 of FOIA to deem the complaint's wider complaint about the therapist vexatious. He would remind the public authority that the FOIA and its exemptions can only be applied to requests for information and not as a formal response to complaints.

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,
    LEICESTER,
    LE1 8DJ

    Tel: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

60. 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.

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

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