

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 November 2009

Public Authority: Blackpool, Fylde and Wyre Hospitals NHS Trust
Address: Blackpool Victoria Hospital
Whinney Heys Road
Blackpool
Lancashire
FY3 8NR

Summary

The complainant made a series of requests to Blackpool, Fylde & Wyre Hospitals NHS Trust ('the Trust') relating to the death of his mother following a surgical procedure and his subsequent complaint about this matter. Owing to the resources that it felt it had expended on these issues, the Trust came to label the complainant as vexatious for the purposes of its own vexatious complaints policy. The complainant has since requested information about the implementation of this policy, which the Trust refused under section 14(1) of the Freedom of Information Act 2000. Whilst the Commissioner understands the sensitivity of the history of the request, he has found that section 14(1) does apply and has therefore not upheld the complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. In 2005, the complainant's mother had an operation at a hospital that comprises part of the Trust. Unfortunately, a few days after the surgery, she passed away.
3. The complainant has questioned, amongst other issues, the length of time between the original diagnosis and the resulting operation, the surgical management of the procedure and the post-operative care offered by the

- hospital. Having raised his grievance, the complainant felt that the Trust failed to address his concerns and questions appropriately and therefore referred this matter to the Healthcare Commission ('HC') in early 2006.
4. In assessing the complaint, the HC put forward a number of recommendations for the Trust to undertake. Yet, as the complainant was dissatisfied with the scope of its review, the HC reconsidered the complainant's case. It subsequently upheld his complaint about the Trust's handling of his original grievance and the adequacy of the responses it had provided to him.
 5. The complainant has since alleged that the Trust failed to meet the requirements set out in the HC's findings and been critical of the Trust's supposed reluctance to apologise for its role in his mother's death. Consequently, he continued to ask the Trust to respond to information requests or general comments about this matter.
 6. In October 2008, the Trust informed the complainant that it considered him vexatious for the purposes of its own 'Vexatious Complaints Policy' and would therefore no longer respond to correspondence that was associated with his complaint. This was based on the judgment that the complainant's behaviour satisfied three elements of the policy:
 - "Persists in pursuing a complaint where the NHS complaints procedure has been fully and properly implemented and exhausted."
 - "Has in the course of addressing a registered complaint, had an excessive number of contacts with the Trust placing unreasonable demands on staff."
 - "Displays unreasonable demands or patient/complainant expectations and fails to accept that these may be unreasonable."
 7. It is this policy that now forms the subject of the complainant's request being considered here, although it is important to note that the Trust's own vexatious policy has no connection to the issue of vexatiousness contained in section 14(1) of the Act.

The Request

8. The request that serves as the basis of this notice was originally submitted to the Trust on 1 December 2008:

"In accordance with the terms of the Freedom of Information Act 2000, please provide a copy of the trust's files (including all documentation and correspondence detailing the requirement and purpose of such a policy) relating to the introduction and amendment of the trust's Vexatious Complaints policy - Unique Identifier CORP/POL/153."

9. The Trust issued its refusal notice on 23 December 2008, stating that the requested information was being withheld under the exclusion provided by section 14(1) of the Act.
10. On 5 January 2009, the complainant appealed the Trust's refusal. To support his appeal, the complainant referred to the Trust's 'incompetence' in handling his original complaint and his rejection of the Trust's reasoning for applying its 'Vexatious Complaints Policy.' In addition, the complainant remarked that:

"[i]t is interesting that the trust's 'Vexatious Complaints Policy' was first introduced following my demand that a full and proper explanation of the circumstances of my mother's death and the trust's refusal to do so."
11. In its correspondence of 26 January 2009, however, the Trust informed the complainant that it had upheld its original decision to refuse the request under section 14(1) of the Act.

The Investigation

Scope of the case

12. On 9 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"The trust's 'Vexatious Complaints Policy' was first introduced in July 2006 following my repeated requests for a full and proper explanation of the circumstances of my mother's death, the trust's denial of culpability and refusal to respond to my letter dated 8th December 2005. The policy has been applied against one person, me. I therefore requested the information relating to the introduction of its 'Vexatious Complainant' policy to understand its motivations that resulted in such a policy."

Chronology

13. In his correspondence of 19 August 2009, the Commissioner asked the Trust to demonstrate in greater detail why section 14(1) of the Act would apply, making specific reference to his published guidance on this issue (Awareness Guidance No. 22 'Vexatious or repeated requests').
14. The Trust responded on 14 September 2009. To support its claim that the request of 1 December 2008 was vexatious, it provided a brief backdrop to the request and a snapshot of the communications exchanged between the parties. It also explored in greater depth how the request met some of the criteria included in the Commissioner's guidance for determining vexatiousness.
15. On 1 October 2009, the complainant contacted the Commissioner to advise him that he "had been greatly inconvenienced by the trust's refusal to provide the

information concerning the death of my mother. It has told both me and the Healthcare Commission that it has made changes and improvements and then refused to provide details of what it stated it had done.” The complainant therefore asserted that the Commissioner must require the Trust to comply with his request.

Analysis

Substantive Procedural Matters

16. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. Full extracts of the relevant legislation considered in the case can also be found in the Legal Annex to this notice.

Section 14(1) - vexatious request

17. Section 14(1) provides that a public authority does not have a duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.
18. Deciding whether a request is vexatious is essentially a balancing exercise and, in weighing up this issue, the Commissioner has considered the following factors:
- Could the request fairly be seen as obsessive or manifestly unreasonable?
 - Is the request harassing the authority or distressing to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
19. 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 the exclusion to be engaged.
20. A significant feature of the Trust's submissions concern the complainant's attempts to reopen issues, namely the circumstances around his mother's death and the Trust's subsequent handling of his complaint, that it feels have already been considered. Yet, on the face of it, the request in question would seem to demonstrate a shift away from these principal subjects towards a specific policy implemented by the Trust.

21. Nevertheless, the Commissioner acknowledges that the Trust's 'Vexatious Complaints Policy' has been used to restrict the complainant's communications with the authority. The Commissioner has therefore viewed the request as forming part of the complainant's general grievance against the Trust.

Could the request fairly be seen as obsessive or manifestly unreasonable?

22. An obsessive request or a request that is manifestly unreasonable is often a strong indication of vexatiousness. 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 debated.
23. The Commissioner understands that the death of a close family member will always be traumatic and will often lead to questions about the quality of healthcare offered to that individual.
24. The Commissioner is also conscious that the HC has identified shortcomings in both the patient's treatment and the Trust's handling of the complainant's subsequent concerns. Coupled with this, the complainant is of the view that the Trust has failed to carry out the HC's recommendations or taken sufficient responsibility for its involvement in his mother's death. The Commissioner would therefore not find it unreasonable that a member of the family would want to know more about the surrounding circumstances of the case and, where applicable, to hold an authority to account.
25. However, the Commissioner is mindful that there must be a limit to such enquiries. The complainant was originally provided with a copy of his mother's health records casenote folder in October 2005. Since July 2006, the Trust has fielded 56 separate requests, spread out over 16 different dates. A significant number of these requests asked for comparative data on the type of procedure performed on the complainant's mother, and the ensuing complications.
26. In addition to the channel of communication afforded by the Act, the Trust has separately responded to the complainant's general correspondence about his complaint, as well as co-operating with the HC to further its own investigation.
27. The Commissioner accepts that the Trust's 'Vexatious Complaints Policy' will impede the complainant's ability to communicate freely with the Trust. Nevertheless, the Commissioner considers that the requested information is, in itself, unlikely to further his grievance against the Trust. Accordingly, the Commissioner is of the view that pursuing an issue about the introduction and amendment of this policy is indicative of obsessive behaviour.
28. In coming to this judgement, the Commissioner has borne in mind the fact that the Trust informed the complainant, in an email dated 11 November 2008, that he should contact the Parliamentary Health Service Ombudsman ('PHSO') if he wished to continue to pursue any part of his complaint, including the decision to class him as vexatious. Despite being offered the opportunity for recourse through the PHSO, the complainant has continued to contact the Trust in order to advance his own investigation.

29. The Commissioner accepts that there is a fine line between persistence and a request being obsessive or manifestly unreasonable. In this instance, the Commissioner believes that the complainant has stepped over this line by using the Act to force the Trust to visit an issue that it has already considered; an issue that can be looked at by an objective body.
30. Furthermore, the Commissioner considers that the pattern of the complainant's requests instil little confidence that compliance would not simply have triggered further correspondence and requests.
31. Ultimately, the complainant will always remain dissatisfied with his mother's treatment and will therefore continue to contact the Trust in an effort to hold someone accountable for her death. This has culminated in a request for information on the Trust's vexatious policy that, although not immediately or obviously linked to his previous requests, demonstrates the complainant's intentions to perpetuate a complaint against the Trust.
32. Against this background, the Commissioner has deemed the request as obsessive.

Does the request have the effect of harassing the public authority or causing distress to staff?

33. The Commissioner acknowledges that there will often be an element of overlap between the various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not intend to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
34. The Commissioner has taken into account the likelihood that a response ending the ongoing the exchange of correspondence could ever realistically be provided. In addition, the Commissioner has considered the provocative nature of some of the complainant's comments aimed at staff within the Trust. For example, in his response to being labelled vexatious under the Trust's policy, dated 24 October 2008, the complainant claimed that the Chief Executive had:

“...sought to cover up your [the Chief Executive's] incompetence and negligence by refusing to provide information, by providing misleading information and through blatant and deliberate lies. You have failed to answer my correspondence and questions [sic] denied receipt of correspondence you had signed for. No apology from you for your lies and deception; just more lies and deception.”
35. The Commissioner appreciates the emotive terms would likely be the result of frustration borne out of bereavement. However, given the length of time that the Trust has been dealing with this issue and the nature of the enquiries, the Commissioner believes it is reasonable to conclude that the effect of the request would be to harass the public authority or its staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

36. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
37. In the Information Tribunal case of *Coggins v the Information Commissioner* (EA/2007/0130), the Tribunal found that a “significant administrative burden” was caused by the complainant’s correspondence with the public authority that started in March 2005 and continued until the authority’s application of section 14(1) in May 2007. Similarly, the Trust has had to deal with the complainant’s correspondence and requests over a sustained period.
38. Tellingly, it is common for the complainant’s correspondence to return to earlier matters, particularly where the complainant remains dissatisfied with the response. Whilst the Trust has conceded that complying with the request in question would not prove to be resource-intensive, it would seem reasonable for the Trust to consider that compliance would likely lead to further correspondence, thereby imposing a significant burden.

Was the request designed to cause disruption or annoyance?

39. The Commissioner observes that the actual effect of much of the complainant’s contact with the Trust, particularly the revisiting of issues examined by the Commission, is to cause disruption and annoyance, although he notes that this would not seem to be the likely intention for much of the complainant’s correspondence.
40. However, in relation to the request in question, the complainant has sought to foster the perception that the Trust has purposefully obstructed or impeded his enquiries. This has resulted in him questioning the Trust’s original intentions in drawing up its policy for dealing with vexatious complaints.
41. As referred to previously, the Commissioner is aware that the Trust has advised the complainant of his entitlement to contact the PHSO should he be unhappy with his being classified as vexatious or any other part of the Trust’s management of his complaint. In the light of this, the Commissioner considers that the reason for requesting the records relating to the introduction of its ‘Vexatious Complaints Policy’ is, at least in part, to continue his campaign against the Trust and, in so doing, this has caused disruption to the authority. That said however, the Commissioner considers there is insufficient evidence to conclude that any disruption or annoyance caused by the request was done so with deliberate intent.

Does the request lack any serious purpose or value?

42. By itself, whether a request does or does not have value is not of significance given that the freedom of information legislation is not concerned with the motives

of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should an authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.

43. The Commissioner considers that, to an extent, the serious purpose or value that the complainant originally had has been undermined by the long periods of time over which the correspondence was undertaken and his determination to reopen matters that have been deliberated on by the Trust.
44. However, the Commissioner is acutely aware of the sensitivity of the subject of the complainant's requests and his real concern that the 'Vexatious Complaints Policy' will prove obstructive to his efforts to hold the Trust to account. The Commissioner has therefore judged that there is insufficient evidence to suggest that the request lacks serious purpose or value.

Conclusion

45. The Commissioner recognises that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
46. Taking all the relevant matters into account, including the history and context of the request, the Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to deem the request as vexatious.

The Decision

47. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

48. The Commissioner requires no steps to be taken.

Right of Appeal

49. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 4th day of November 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

S.1 General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

S.14 Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”