

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 May 2015

Public Authority: Camden and Islington Foundation Trust

Address: St Pancras Hospital
4 St Pancras Way
London
NW1 0PE

Decision (including any steps ordered)

1. The complainant has requested information about clusters of deaths referred to in a particular Care Quality Commission report. Camden and Islington Foundation Trust ('the Trust') initially refused to disclose the information which it said was exempt under section 40(2) (third person personal data) and section 41 (information provided in confidence). During the Commissioner's investigation however, the Trust withdrew its reliance on sections 40 and 41 and now says that it is not obliged to comply with the request under section 14(1), as the request is vexatious.
2. The Commissioner's decision is that the request is not vexatious. The Commissioner requires the Trust to issue the complainant with a fresh response without relying on section 14 and clearly identifying any information that it wishes to exempt.
3. The public authority must take these steps within 35 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 a contempt of court.
4. The Commissioner also finds that the Trust breached section 10 (time for compliance) because it did not provide a response within 20 working days but met its obligations under section 16 (advice and assistance).

Request and response

5. On 28 August 2014, the complainant wrote to the Trust and requested information in the following terms:

"Under provisions in the Freedom of Information Act 2000 please provide me with copies of all reports in relation to the clusters of deaths referred in the Care Quality Commission Quality report dated 22 August 2014 at page 15.

The CQC report can be found here

http://www.cqc.org.uk/sites/default/files/taf_provider_camden_and_islington_nhs_foundation_trust_scheduled_20140805.pdf"

6. The Trust responded on 16 October. It subsequently explained to the Commissioner that a change in relevant staff had meant it had been unable to respond to the request within 20 working days. In its response the Trust said that the requested information was exempt from disclosure under section 40(2) and section 41 of the FOIA.
7. Following an internal review the Trust wrote to the complainant on 20 November. It upheld its position.

Scope of the case

8. The complainant contacted the Commissioner on 8 December 2014 to complain about the way his request for information had been handled. He did not accept the Trust's application of section 40(2) and 41 to his request. He is also dissatisfied that the Trust's response was late and with the way it had handled the internal review.
9. In its first submission to the Commissioner, the Trust initially maintained its reliance on the exemptions under section 40(2) and 41 in relation to the information it considered fell within the scope of the request. However during the Commissioner's investigation, the Trust identified further relevant information: 12 additional reports totalling 188 pages. In a second submission, the Trust reconsidered its response and is now refusing to comply with the request which it says is vexatious under section 14(1). It withdrew its reliance on sections 40(2) and 41. The Commissioner advised the Trust to inform the complainant of its new position and it did so on 7 April.

10. The Commissioner has focussed his investigation on the Trust's application of section 14 to the request. In addition he has looked at the Trust's handling of the internal review.

Reasons for decision

11. **Section 14(1)** of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term "vexatious" is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
16. The information that the Trust initially identified comprises summary review reports that the Trust produced, which the Commissioner has seen. These concise reports note the details of, and analyse, each one of a cluster of unexpected deaths of (and serious injuries to) individuals using Trust services that occurred in March and April 2013.

17. The additional information that the Trust subsequently identified comprises 12 investigation reports that informed the review reports above. The Trust says that these reports are significantly more substantial in length and context than the summary reports and total 188 pages. They contain voluminous personal and sensitive personal data and information provided in confidence. The Trust has told the Commissioner that had it identified these reports initially, it may have applied section 14 to the complainant's request when it was first received.
18. In its second submission, dated 31 March 2015, the Trust explained that it now considers the request is vexatious because complying with it would place a significant burden on the Trust.
19. The Trust says it has applied section 14 to the request because it would need to review all the material within the scope of the request and redact all the information that is exempt from disclosure under section 40(2) and 41. It would also need to provide an explanation for why this information is exempt. In addition, the complainant has requested information relating to *deaths* only, so the Trust would also need to redact from the material all the information relating to cases of serious injury.
20. The Trust argues that undertaking this activity would be likely to cause it a disproportionate or unjustified level of disruption, irritation or distress. The Trust says that any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material. Therefore, reviewing the investigation reports – 188 pages in total – would be so grossly oppressive, in terms of the strain on the Trust's time and resources, that the Trust says it cannot reasonably be expected to comply with the request.
21. The Commissioner has first considered the degree to which reviewing the material in question – that is, the summary reports and the investigation reports – would be a burden to the Trust.
22. The Commissioner's guidance on section 14 discusses requests where collating the requested information will impose a significant burden. It recommends that public authorities whose main concern is the cost (and time) of finding and extracting the information should consider the request under section 12 of the Act (cost of complying exceeds the appropriate limit), where possible.
23. The Trust has acknowledged that section 12 cannot be applied in this case. This is because the costs covered in section 12 include those incurred in: determining whether the information is held; locating the information; retrieving the information and extracting the information.

The costs and effort covered by section 12 do not include those associated with considering exemptions or redacting exempt information, which is the activity that the Trust considers it will need to undertake to comply with the request.

24. The guidance goes on to say that a public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a “grossly oppressive” burden on the organisation. It goes on to confirm that the Commissioner considers there to be a high threshold for refusing a request on such grounds. The guidance says that an authority is most likely to have a viable case where: the requester has asked for a substantial volume of information **and**; the authority has real concerns about potentially exempt information **and** any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
25. Taking the first of these criteria, based on his significant experience it is the Commissioner’s view that 12 investigation reports comprising 188 pages (in addition to the brief, summary reports) does not constitute a sufficiently substantial volume of information.
26. He notes that the Trust has expressed to him genuine concerns about the sensitivity of much of the information contained in the material – covering as it does the circumstances around the unexpected deaths of a number of Trust service users.
27. With regard to the third criterion, the Commissioner appreciates that much of the potentially exempt information may be scattered through the material. However he notes the similarity of this case with [FS50476268](#). In that case, elements of the information were withheld in their entirety under section 40 and section 41, given their sensitive subject matter: serious adverse incident reports compiled within South Eastern Health and Social Care Trust. These contained information from individuals’ medical records, police reports and coroners’ reports. This therefore negated the need to carry out a time consuming, line by line analysis of the information in order to identify what, if anything, could be disclosed and what should be withheld through redaction. The Commissioner is of the view that this is an approach the Trust could consider.
28. Since two of the three measures at §24 do not appear to the Commissioner to have been met, he does not consider that the Trust’s case for categorising the request as a “grossly oppressive” burden is viable. As discussed at §12 to §14, one measure of whether a request is vexatious is that it would cause the public authority a disproportionate or unjustified level of disruption. The Commissioner is of the view that

complying with the request is not sufficiently burdensome as to cause the Trust the necessary high level of disruption. He has consequently not gone on to consider the purpose and value of the request in order to form a judgement on whether any burden is proportionate or justified.

29. Having considered the Trust's submission and his guidance, the Commissioner is satisfied that complying with the request would not be a significant burden to the Trust. He has decided therefore that the request is not vexatious and that section 14(1) of the FOIA cannot be applied to it.
30. **Section 10** of the FOIA says that a public authority must respond to a request for information no later than the twentieth working day following the date of receipt.
31. The complainant submitted his request on 28 August 2014 and received a response on 16 October. The Commissioner notes the staff change that the Trust had undergone at this time, but must find that it breached section 10.
32. **Section 16** of the FOIA places an obligation on a public authority to offer advice and assistance to an applicant. The complainant told the Commissioner that he was not satisfied that the same person who provided a response to his request also appeared to have carried out the internal review of that response. When questioned about this, the Trust noted that paragraph 40 of the Freedom of Information Code of Practice says:

"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable."
33. The Trust told the Commissioner that it has only one member of staff dedicated to Freedom of Information and information governance matters and that it does not have the resources for someone senior to review its responses to FOIA requests. On this occasion, the dedicated officer had collated information they had received from colleagues in relevant teams into a response for the complainant. The officer had subsequently carried out, what they confirmed to the Commissioner was, a full and fair review of that response. In the circumstances described, the Commissioner considers that the review the Trust carried out was satisfactory and that it complied with section 16.

Other matters

34. Finally, in its submission the Trust told the Commissioner that it publishes on its website a Serious Incident Thematic Review Report and Briefing at <http://www.candi.nhs.uk/news/independent-serious-incident-thematic-review-published> This independent report and briefing concerns the clusters of deaths referred to in the CQC report which, in turn, forms the basis of the information requested by the complainant.

Right of appeal

35. 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

36. 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.
37. 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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