

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 June 2015

**Public Authority:** Care Quality Commission  
**Address:** Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

#### Decision (including any steps ordered)

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1. The complainant has requested information on the legal qualifications of certain legal advisers at the Care Quality Commission ("CQC"). The CQC refused the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the CQC has correctly applied the provisions of section 14(1) to refuse the request. He requires no steps to be taken.

#### Request and response

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3. On 5 February 2015, the complainant wrote to the CQC and requested information in the following terms:
  - 1) *Does the CQC "Legal Advisor" previously described by the CQC as "Legal Advisor 1" currently work as a "Legal Advisor" for the CQC? If so, is "Legal Advisor 1" one of the CQC's 3 "Legal Advisors" who currently hold no professional legal qualifications whatsoever?*
  - 2) *Does the CQC "Legal Advisor" previously described by the CQC as "Legal Advisor 3" currently work as a "Legal Advisor" for the CQC? If so, is "Legal Advisor 3" one of the CQC's 3 "Legal Advisors" who currently hold no professional legal qualifications whatsoever?*
4. The CQC responded on 23 February 2015. It stated that it would not be responding to the request as it considered it be vexatious. The CQC expanded upon this by explaining it considered the request to be similar

to previous requests and it seemed to be an attempt to reopen issues addressed by the First Tier Tribunal. The CQC provided advice and assistance to the complainant under section 16 of the FOIA by explaining further about how the section 14 exemption worked and directing the complainant to guidance on this.

5. Following an internal review the CQC wrote to the complainant on 25 March 2015. It stated that it upheld its decision to refuse the request as vexatious and provided the complainant with some further guidance on the sorts of requests which may be considered vexatious if the complainant were to make them in the future.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 30 March 2015 to complain about the decision of the CQC to refuse his request.
7. The Commissioner considers the scope of his investigation to be to determine if the CQC has correctly applied the provisions of section 14 to refuse the request.

### **Background**

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8. The CQC has explained that it has been engaged in correspondence with the complainant following a decision it made on 2 September 2011 to cancel the registration of a provider.
9. A request was made under the FOIA to the CQC on 22 September 2012, part of which requested copies of legal advice. The CQC withheld the legal advice on the basis of the section 42 exemption (legal professional privilege). The complainant referred this to the Commissioner and the CQC agreed to voluntarily disclose the legal advice but withheld the names of the legal advisors under section 40(2) of the FOIA.
10. Following further correspondence with the Commissioner the CQC agreed to identify individuals within the legal advice as "Legal Advisor 1", "Legal Advisor 2" and so on, in order to ensure the legal advice could be read and understood. The complainant submitted a complaint to the Commissioner about the continued use of section 40(2) to withhold the names of the legal advisors and the Commissioner upheld the decision

of the CQC<sup>1</sup>. The decision was appealed to the Information Tribunal who dismissed the appeal<sup>2</sup>.

## Reasons for decision

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11. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*<sup>3</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress of and to staff. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather it stressed:  
  
*"the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests."* (paragraph 45)
14. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

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<sup>1</sup> FS50526241

<sup>2</sup> EA/2014/0146

<sup>3</sup> 2012 UKUT 440 AAC / GIA 3037 2011

15. 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<sup>4</sup>. 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.
16. The CQC has identified several indicators as being present within the request. It has provided arguments that the request was obsessive and demonstrates unreasonable persistence, that the request is one of many on the same issue and that the effect of the requests is to harass CQC staff.

### **Obsessive request and unreasonable persistence**

17. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subject to some form of independent scrutiny.
18. In the Commissioner’s view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
19. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
20. In this case, the CQC has explained that the complainant has been engaged in correspondence since 2012 about the decision of the CQC to cancel the registration of a particular body as a care provider. As well as FOIA requests, the complainant has also been involved in direct and repeated correspondence with the CQC, often directly with the manager

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

of the team responsible for making the decision to deregister the care provider.

21. The CQC has listed the requests made during this period:

- 22 September 2012
- 24 July 2013
- 15 October 2013
- 18 November 2013
- 19 March 2014
- 5 May 2014
- 25 May 2014
- 20 July 2014
- 2 November 2014
- 5 February 2015

22. The Commissioner acknowledges this may not seem like a significant number of requests over a two year period but many of these requests contain multiple questions and have to be considered alongside the other correspondence that the complainant has submitted to the CQC which is of a high volume.

23. The Commissioner accepts that the volume of correspondence, including information requests is persistent. It is clear that responding to one request has not resolved the matter and has led to further requests for information.

24. The complainant has not directly provided the Commissioner with submissions to explain the basis for his continued correspondence and requests but in his correspondence with the CQC about his complaints he has referred to needing assistance in "*reversing the CQC's latest despicable, cowardly, craven & shameful "black is white" decision*". In his request for an internal review about the first decision to refuse to provide the legal advice, the complainant argued that full disclosure was needed to cast light on the CQC's "*seemingly inexplicable "black is white" decision*".

25. The Commissioner has not been provided with examples of the correspondence other than FOI requests between the complainant and the CQC so cannot comment on the differences between these types of correspondence. However, from the information the CQC has supplied he notes that much of the continued correspondence with the CQC has been on the theme of the CQC's decision and the 'lawfulness' of the decision.

26. The CQC, when outlining the correspondence it has had with the complainant, has explained that the complainant, as well as writing directly to the team who made the decision he disputes, has been in direct communication with the Chief Inspector for Adult Social Care and had a face to face meeting with him where the CQC's decision was explained to him. Despite this, the complainant has continued to correspond with, and make complaints to, the CQC. These have been considered under the CQC's formal complaints process and the complainant has exhausted the CQC's internal complaints procedure, receiving a response from the National Complaints Manager.
27. The CQC also states the complainant has referred his complaint to the Parliamentary and Health Service Ombudsman (PHSO) and the Department of Health.
28. The Commissioner is aware that the PHSO has ruled out any investigation into the issues raised by the complainant. Despite this the complainant has continued to interact with the CQC both via FOIA requests and in general correspondence. In terms of whether the request is obsessive in nature the Commissioner is minded to accept that the request does have the characteristics of an obsessive request.
29. It is clear that the issues between the CQC and the complainant have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The PHSO has also been involved but this has not led to a resolution. The CQC believes that the complainant is now using the FOIA to continue his campaign. It argues that the complainant has stated his determination to continue to pursue his campaign and will continue to make requests.
30. The Commissioner acknowledges that the persistent requests are being made despite the fact that the CQC has made every effort to respond to the requests and correspondence and regardless of previous requests that have been sent. The Commissioner considers that these requests could be seen as an attempt to reopen the debate and issues that have already been reviewed and addressed by the CQC. The Commissioner therefore accepts that the continued requests to the CQC, taking into account the context and background to the request, have reached the stage where they can reasonably be described as obsessive.

### **Frequent requests and harassment of staff**

31. The CQC had argued that the request which is the subject of this decision was essentially a repeat of three previous requests. The issue of requesting the names of the legal advisors was first brought up in the first FOI request and the matter was considered by the Information Tribunal. When submitting his complaint to the Tribunal the complainant

argued he needed the names of the legal advisors to be able to establish their "*legal credentials and expertise*".

32. The second time this information was requested was in a request dated 4 May 2014 (shortly after the redacted legal advice had been provided to the complainant). This was a request in several parts and one part asked for "*the full names of the CQC's current in-house Legal Head of Service; Legal Managers; Principal Legal Advisors; Senior Legal Advisors; and Legal Advisors.*" The request went on to ask for each of these individual's legal qualifications and experience. This request was refused under section 14 of the FOIA but not challenged by the complainant.
33. Similar information was again requested on 2 November 2014 (shortly after the Information Tribunal ruling) and asked the CQC to specify, without providing names, which of the CQC's legal team were qualified solicitors and which were not. The CQC refused this information under section 40(2) of the FOIA and was not challenged by the complainant.
34. Section 14(2) of the FOIA states that a public authority does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. For section 14(2) to apply the public authority would need to either have provided the information in response to an earlier request or have previously confirmed the information was not held.
35. In this case the CQC has not provided the information previously and has not stated the information is not held so section 14(2) is not engaged. However, the CQC has clearly evidenced that the complainant has asked for broadly similar information on the legal qualifications of its legal advisors on several previous occasions.
36. The Commissioner recognises that the complainant has made frequent requests for the same information, albeit wording slightly differently, and on each occasion has been informed the information will not be disclosed. The Commissioner accepts that this latest request could be construed as an attempt to prolong the issue and continue his campaign.
37. The CQC has argued that these continued attempts to pursue the disclosure of the names and qualification of the legal advisors referred to in the original disclosure of the legal advice are part of a campaign which is having the effect of harassing its staff. The CQC has argued that dealing with an ongoing series of requests and correspondence from the complainant in which he attempts to obtain the same

information through rewording and redirection is time-consuming, frustrating and difficult for all the staff involved.

38. The CQC has asserted that the complainant's previous correspondence implies the CQC has sinister motives to its decisions and there is a concern that individual members of staff could be subjected to allegations of collusion, corruption and cowardice.
39. The CQC evidenced that the complainant has in the past directed his correspondence to individual members of staff in the Adult Social Care department and has frequently referred to the CQC's decisions as "cowardly", "craven" and "shameful". He has referred to the decision as a "betrayal of the elderly" and on one occasion stated that *"It may be that the elderly and vulnerable are being unnecessarily abused, assaulted or even murdered by carers in their own homes, as a result of the persistent refusal by the CQC to uphold and enforce the law."*
40. The Commissioner considers the frequent and similar nature of the requests are seeking to continue to campaign on an issue which has exhausted the complaints process at the CQC and has been dismissed by the Information Tribunal and the PHSO. The rewording of the requests does not change the purpose or intent to obtain information on the qualifications of the legal advisors involved in writing the legal advice which was the subject of the complainant's first FOIA request in 2012.
41. That being said, the Commissioner does not consider the intent behind these requests was to harass staff. Some of the correspondence does use strong words but this is reflective of the clear strength of feeling from the complainant on the issue but is not indicative of attempts to harass individual members of staff. The Commissioner therefore does not accept that the requests were made with the intent to harass but may have had the inadvertent effect of causing some distress to staff who were the subjects of correspondence directed to them individually.
42. The Commissioner considers the concerns of the CQC that disclosure of the legal qualifications could identify the legal advisors and lead to those individuals being harassed to have some merit but as this has not occurred the Commissioner cannot take this into account when considering if this request is vexatious.

### **Disproportionate effort**

43. When assessing whether a request or the impact of dealing with a request is justified and proportionate the Commissioner considers it helpful to assess the purpose and value of the request.



44. The CQC has already shown that there have been a number of requests from the complainant on similar related subjects as well as other correspondence. The CQC has acknowledged that the complainant had a legitimate interest in the reasons for the CQC's decision to cancel the registration of the care provider but the disclosure of the legal advice should have been sufficient to satisfy the legitimate interest in this case.
45. It is the Commissioner's view that the complainant did have a serious purpose to his requests when asking for information about the decision but this has now lessened over time as requests have been responded to, information provided and further requests sent. In addition to this, there has been a decision by the Information Tribunal and a referral to the PHSO and since then these concluded requests have continued to be sent.
46. The complainant has argued that he cannot assess the validity of the legal advice provided by the CQC without being able to link the advice with the legal advisors and knowing their legal credentials. When this argument was submitted to the Information Tribunal they dismissed this argument by stating that:

*"The Appellant in fact provided an analysis of the advice in support of his appeal – a demonstration that the disclosure already made provided the public with sufficient material for an informed public debate on the issues which concerned him."* (paragraph 11).
47. The Tribunal also commented there was *"no discernible public interest"* in disclosure of the names of the advisors and the Commissioner considers this argument also applies to the qualifications of the legal advisors.
48. The Commissioner does acknowledge there is persistence to the requests and that this may be considered when determining if responding to the request would constitute a disproportionate effort but this must also be considered alongside any value to the requests, specifically any wider public interest there may be in the information.
49. The CQC argues that the comments from the Tribunal are clear that there is no public interest to be found in the disclosure of information on the qualifications of the legal advisors. The complainant argues that knowing the qualifications and names would allow him to properly scrutinise the advice but the CQC argues that it has already informed the complainant of the qualifications required for its legal advisor roles and that this is sufficient.

50. Having considered all the information provided by both parties the Commissioner has focused on whether there is any wider public interest in the release of this information.
51. The Commissioner can only draw his conclusions based on the fact that any serious purpose or value to the requests has diminished over time as the correspondence and requests have continued and he adds significant weight to the views of the Information Tribunal that the complainant himself demonstrated that he had sufficient material already to initiate an informed public debate.
52. The Commissioner considers the CQC has demonstrated that the requests and correspondence have reached a point where it is no longer reasonable for the CQC to expend further resources on dealing with the requests.

### **Conclusion**

53. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the CQC was correct to find the request vexatious. He is satisfied that the request is obsessive and persistent and there is a lack of serious purpose and, as such, the effort in dealing with the request would be disproportionate. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

## Right of appeal

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54. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

55. 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.
56. 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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