

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2017

Public Authority: Dr Michael Waldron
Address: Fowey River Practice
The Surgery
Rawlings Lane
Fowey
Cornwall PL23 1DT

Decision (including any steps ordered)

1. The complainant has requested information about printing options. Fowey River Practice ('the Practice') has refused to comply with the request which it says is vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious and the Practice is not obliged to comply with it.
3. The Commissioner does not require the Practice to take any steps.
4. The Commissioner notes that the Practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the Practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. For ease and clarity, this notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

5. On 24 October 2016, the complainant wrote to the Practice and requested information in the following terms:

"Mrs Bone's [the Practice Manager] letter of 9th May 2016 states,

"Patient profiles are print outs from patient records, these can vary depending on what is chosen to be printed".

1) *How many print options are there?*

2) *How does a clinician choose the correct option to send to a patient?*

3) *What are the descriptions the clinician can choose from?...*

... 1) Has "workflow" been installed?

2) Was the Microtst Ltd evolution software updated to work with "workflow?" "

6. The Practice responded on 19 December 2016. It said it had already dealt with the matters raised in previous requests and that it would not respond to further correspondence from the complainant about these matters.

7. The complainant requested an internal review on 3 January 2017. The Practice sent him the outcome of its internal review on 20 January 2017. It said the options for printing are infinite and confirmed clinicians would not choose print options.

8. During the Commissioner's investigation, the Practice revised its position and confirmed that it considered the request to be vexatious under section 14(1) of the FOIA. It issued the complainant with a refusal notice to this effect on 30 March 2016.

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2017 to complain about the way his request for information had been handled.
10. The Commissioner's investigation has focussed on whether the complainant's request can be categorised as vexatious under section 14(1) of the FOIA.

Reasons for decision

11. **Background**

12. In its submission to the Commissioner, the Practice has provided a background to the current request.
13. The Practice has told the Commissioner that the complainant and his late partner (who died in 2012), and subsequently the complainant alone, have made a large number of complaints regarding the care of his late partner, which the Practice provided in the early part of 2010.
14. In June 2010, the Practice entered into a correspondence with the complainant and his late partner regarding their concerns over her care. As the correspondence and a subsequent telephone call failed to satisfy their concerns, the Practice offered to meet with the complainant to see if the matter could be resolved locally. A date was offered.
15. The Practice says that, unbeknownst to it and at the same time as the attempt for local resolution, the complainant had made a formal complaint to the General Medical Council (GMC) regarding two doctors from the Practice. On advice from medical defence organisations, the plan for a local resolution meeting was cancelled and the doctors cooperated fully with the GMC investigation. The investigation was concluded in June 2011 with no sanctions on either doctor's licence to practice.
16. Following the initial GMC investigation, the Practice received frequent correspondence from the complainant, often receiving letters on an almost weekly basis, and with letters also commonly copied to every single partner in the Practice. In August 2011 a meeting was therefore arranged between the complainant and the Practice to see if a local resolution to his concerns could be negotiated. It was agreed at the meeting that the complainant would await a written summary of the outcomes of the meeting and, if needs be, a further meeting could be arranged. However, before the minutes of the meeting had been provided, more letters outlining the complainant's areas of concern were delivered to the Practice.
17. At this point in 2011, the Practice formalised an investigation and sent a full written report to the complainant finalising the Practice's position. The Practice says that it was clear from this document that, were the complainant to be unhappy with the Practice's position, there was the possibility of taking his complaint to the Parliamentary and Health Service Ombudsman (PHSO). In the event, and outside of the NHS complaints procedure, the complainant also escalated his complaint to the complaints department and the acting responsible officer of the (as it then was) Primary Care Trust – a process that the Practice says it engaged with.

18. Meanwhile, at the complainant's behest, the GMC reviewed and re-investigated the fitness to practice of two doctors in the Practice under GMC rule 12. The Practice says that, again, the doctors cooperated fully with the investigation and, again, no sanction was ultimately made on their licences. Additionally, the complainant made a complaint against a third doctor in the Practice. This again was investigated formally by the GMC, with a conclusion of 'No further action'.
19. In January 2012, the complainant complained about both the care provided by the Practice and the management of his complaint to the PHSO. The Practice says it cooperated with the investigation with an extensive correspondence and a face-to-face meeting with the investigator from the PHSO's office and its medical expert. The PHSO ultimately upheld the complainant's complaint and the Practice says it apologised once again, agreed a course of remedial action and made a payment to the complainant as recommended by the PHSO. A year on from this decision, the PHSO considered the case to be closed.
20. The Practice says that the complainant has continued to express his dissatisfaction with the care that the Practice provided for his late partner, and how the Practice has engaged in managing his complaint. It says the complainant has pursued a number of avenues, and extensive correspondence with the Practice as well as other agencies, including its software providers Microtest, the Health and Social Care Information Centre, the Care Quality Commission, the NHS England area team and, more recently, the commissioning team for NHS England South West.

Section 14 – vexatious and repeat requests

21. 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.
22. The term 'vexatious' is not defined in the FOIA. The Upper-Tier Tribunal considered the issue of vexatious requests in the case of the Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure".
23. The Dransfield case identified four factors that may be present in vexatious requests:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff

- the value or serious purpose of the request.
24. The Commissioner has identified a number of 'indicators' which may also be useful in identifying vexatious requests. These are set out in her 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; and
 - deliberate intention to cause annoyance.
25. 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.
26. 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 on it and balance this against the purpose and value of the request.
27. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.
28. According to the Practice, the correspondence it has received from either the complainant or his solicitor has been frequent; asking for information sometimes under the auspices of the FOIA and sometimes not.
29. The requests are often overlapping or have been previously answered in earlier letters from the Practice. The Practice also understands that the complainant has made FOI requests to other agencies such as the Care Quality Commission and NHS England.
30. On occasions, the Practice says that the complainant has asked the Practice for information whilst approaching other agencies concurrently for the same information (for example asking both the Care Quality Commission and the Practice simultaneously when the Practice started

using a piece of software called *Workflow*). The Practice says that NHS England has had protracted complaints and repeated FOI requests from the complainant and has, it understands, deemed his requests vexatious.

31. The Practice has told the Commissioner that its total correspondence with the complainant, over what is now more than six years, fills more than six lever arch files.
32. It says that over the last three years the complainant has made repeated and overlapping FOI requests. It has provided the Commissioner with a spreadsheet that records the FOI requests it has received from the complainant from 22 May 2014 to 6 January 2017. The Commissioner notes that some of the requests are multi-part requests for different information and that the request of 6 January 2017 comprises 23 separate requests.
33. The Practice says that further requests may have been submitted over the last few months but, because of staff absences, it has not been able to update its spreadsheet, without diverting more attention away from its patient-facing activities.
34. The Practice has told the Commissioner that dealing with the administration and responses to the complainant's requests has become a regular chore for the Practice manager and partners, taking up a great deal of time and energy in most weeks of the past six years.
35. While it is difficult to quantify the total number of staff hours that has been spent on dealing with the complainant's requests, the Practice says that there is no doubt that it has become a significant and unproductive burden on the Practice. In a time of a growing practice list size, an increased workload of increased intensity and complexity, and a number of staff retirements, such repeated requests for information have an unjustified and disproportionate effect on the Practice.
36. The Practice says this is particularly so in the context of the extensive energy already expended over the period of six years in a genuine but futile effort to resolve the complainant's wider grievances and the efforts made to share all appropriate information consistent with the FOIA, previously. The Practice now feels that the impact would be disproportionate in relation to the request itself and its inherent value and purpose. Further, the Practice argues that it is unjust to its 7,718 other registered patients that the complainant continues to channel large amounts of management and clinician time away from running the practice and engaging in patient-facing clinical activity.

37. The Commissioner appreciates that the complainant suffered a bereavement in 2012 and was entitled to continue to pursue the concerns he had about the Practice's care of his partner before her death.
38. The complainant's concerns led to two formal investigations by the GMC during 2010 and 2011, neither of which resulted in sanctions on the registrations of the two of doctors at the Practice who had been involved in the care of the complainant's partner. The GMC investigated a further complaint the complainant made about a third doctor and found no further action was necessary. The Commissioner notes that the Practice also met the complainant in 2011 to see if his concerns could be resolved informally.
39. However, the complainant also submitted a complaint to the PHSO, which investigated the complainant's concerns in 2012. This investigation upheld the complainant's concerns and the Practice apologised to the complainant, made a payment to him and agreed a course of remedial action. PHSO's case was closed in 2013.
40. It appears to the Commissioner that the complainant's original concerns have been investigated to GMC's and PHSO's satisfaction, if not the complainant's. These investigations took place four to six years ago.
41. The Commissioner has reviewed the Practice's spreadsheet that records the FOI requests it has received from the complainant since 2014. The Commissioner notes ten multi-part requests in 2014, the focus of many of which is an "*intermittent computer fault*" that appears to be the focus of the complainant's concern regarding his partner's care. During 2015, the complainant, or his solicitor on his behalf, submitted 16 requests; three of which are multi-part. Again, the focus of many of these requests is the complainant's concern about the Practice's electronic medical records system. Eight requests were sent in 2016 up to the request that is the subject of this notice. Again these are mostly multi-part requests and again concern the Practice's IT system. The complainant submitted two further requests in November and December 2016, and at least one multi-part request to date, in 2017.
42. In her deliberations as to whether the complainant's request is vexatious, the Commissioner has taken account of the following:
 - The appropriate regulatory bodies formally investigated the complainant's concerns and these investigations concluded a number of years ago.
 - Although these investigations were concluded in 2013, since 2014 the complainant has been submitting FOIA requests to the Practice

on the concerns that the Commissioner understands were investigated by GMC and PHSO. The requests appear to the Commissioner to be an attempt to keep 'live' the matters that were the subject of the concluded investigations, for a motive that is not clear.

- Over the last three years, the requests have been frequent and voluminous in the sense that, for example, the ten requests submitted during 2014 are made up of 30 individual requests, and the 16 requests submitted in 2015 are made up of almost 40 individual requests.
 - The Commissioner is satisfied that responding to this number of requests will have been a significant burden to the Practice; taking up a good deal of manager and clinician time. Initially this burden may have been justified as the complainant perhaps came to terms with, and sought to understand, the circumstances of his partner's care and the GMC's and PHSO's investigations. At the point that he submitted the request that is the subject of this notice however, some three years had passed since PHSO's investigation closed. At October 2016 the Commissioner agrees that the cumulative burden to the Practice of complying with the request was disproportionate to the request's value or purpose.
 - In addition, given the pattern of requests since 2014, the Commissioner considers that if the Practice complies with this request there is a strong likelihood that that will not be the end of the matter, but that the complainant will continue to submit further requests on broadly the same subject ie his original complaints against the Practice.
43. Having considered these factors and all the circumstances of this case, the Commissioner is satisfied that, when considered cumulatively, the complainant's request of 24 October 2016 can be categorised as vexatious under section 14(1) of the FOIA.

Right of appeal

44. 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

45. 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.
46. 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

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