

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 November 2017

**Public Authority:** University College London Hospitals NHS  
Foundation Trust

**Address:** 2<sup>nd</sup> Floor  
Maple House  
149 Tottenham Court  
London  
W1T 7NF

### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to alleged bullying, racial and pregnancy discrimination within the trust. The trust refused to deal with the request, citing section 14 of the FOIA.
2. The Commissioner's decision is that the trust is entitled to rely on section 14 of the FOIA in this case. She therefore requires no further action to be taken.

### **Request and response**

---

3. On 22 May 2017, the complainant wrote to the trust and requested information in the following terms:

"Can you please confirm that all reasonable steps have been taken to ensure that no further victimization is pursued as a result of any association with the ongoing proceedings towards the complaint?"

In addition to the above, we ask further information under the FOI request.

Can you please confirm any policy in place that allowed managers such as [named redacted] to use a manager's position to make completely and utterly malicious investigations against an employee who complained about bullying, victimization and racial discrimination? (see attached) for reference.

As well as the unauthorized and malicious publication of an employee's private texts?

Could you please confirm how many employees under [name redacted]'s department have been accused and secretly investigated or faced disciplinary proceedings and provide their racial background.

Could you please confirm how many employees of minority backgrounds are managers in HR and the anaesthetics department?"

4. The trust responded on 30 June 2017. It stated that it was refusing to comply with the request in accordance with section 14 of the FOIA (vexatious request).

### **Scope of the case**

---

5. The complainant first contacted the Commissioner with complaints against the trust in May 2017 in relation to a number of FOIA requests he states he had made. Up to 1 July 2017 the complainant repeatedly supplied insufficient evidence for the Commissioner to consider a valid complaint under section 50 of the FOIA. However, on 1 July 2017 the complainant provided a copy of the trust's refusal notice of 30 June 2017 and it was agreed with the complainant that the Commissioner would investigate further the trust's application of section 14 of the FOIA. Due to the history of correspondence up to this point the Commissioner decided to accept this complaint without an internal review being carried out by the trust.
6. The scope of this investigation is therefore to determine whether the trust is entitled to rely on section 14 of the FOIA in relation to the complainant's request of 22 May 2017.

### **Reasons for decision**

---

7. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

8. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). 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.
9. 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) harassment or distress of and to staff.
10. 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).
11. 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.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests, which can be accessed via the following link:  
  
<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

### **The trust's arguments**

13. The trust explained that the complainant is the husband of a trust employee who submitted an Employee Led Complaint (ELC) on 25 July 2016 against another trust employee and "associated line management". The ELC catalogued a history of concerns going back to 2013 of alleged racial and pregnancy discrimination, including harassment and victimisation and there was also a previous complaint in 2013 in which the complainant's wife made allegations of bullying and

'over-monitoring' of her in the context of the trust's absence management process.

14. The trust advised that the complainant's wife filed an Employment Tribunal (ET) claim on the same basis on 14 September 2016. The trust's ELC investigation concluded in January 2017 with the outcome that the complaints were not upheld. It also confirmed that it successfully defended the ET proceedings at a full hearing in the Employment Tribunal which took place over five days from 15 to 19 May 2017. The ET's judgement and reasons was given verbally on 19 May 2017 with the parties present. These were final and not subject to change. It was then followed up in writing on 28 June 2017.
15. The trust explained further that due to health reasons it agreed to deal with the complainant in the context of progressing its ELC investigation. However, it stated that it had to revoke this courtesy on 18 November 2016 when it became apparent that the nature, tone and volume of correspondence with him was not conducive to the efficient and effective resolution of his wife's workplace concerns. It was also in November 2016 that the complainant was placed on restricted contact due to the volume and nature of correspondence the trust received. The trust said that the complainant sent correspondence to numerous individuals within the trust and external organisations instead of directing it to the relevant member of staff dealing with a specific issue and despite being informed to coordinate his correspondence in the preferred manner failed to so do. This resulted in a disproportionate amount of time being spent by a number of employees sorting through the correspondence and working out how to coordinate a response. In November 2016 it therefore informed the complainant to correspond with one named individual only and advised him that all other members of staff had been advised to ignore his correspondence. The complainant has continued to send correspondence to multiple recipients and various external organisations and refuses to follow the trust's protocol.
16. The trust has stated that from 2016, when the ELC was instigated, it has received a significant amount of correspondence from the complainant relating to his wife's employment, the ELC and ET proceedings. It has also received five information requests from the complainant seeking information relating to or connected with these issues. Up to the request of 22 May 2017 it has responded to these requests in accordance with its obligations under the FOIA and within the statutory time for compliance.
17. The trust confirmed that it considers the request of 22 May 2017 is an attempt to reopen an issue which had already been comprehensively addressed by the trust and been subject to independent scrutiny. It was made after the ELC was determined and after the ET's verbal judgement

and reasons had been given; both of which did not uphold any of the complaints raised. It said that this request is therefore an attempt to reopen matters that have already been conclusively addressed and the purpose behind it is futile and amounts to unreasonable persistence.

18. It argued that the complainant has targeted his correspondence and requests towards particular employees or office holders against who he and his wife have some personal enmity and have made completely unsubstantiated accusations. The request of 22 May 2017 names two employees and refers to them in a derogatory and accusatory manner. It stated that the request refers to one member of staff by name and accuses her of using her position as a manager "to make completely and utterly malicious investigations against an employee" and to publish "an employee's private texts" in an "unauthorized and malicious manner". Secondly, the complainant names another member of staff and asks how many employees in their department have been "accused and secretly investigated or faced disciplinary proceedings", followed by a request for the racial background of any such individuals, insinuating racial discrimination.
19. The trust said that these are serious allegations, yet they have been made in a publicly available request rather than in a more suitable private complaint to the trust. It confirmed that both the content of these requests and the public "name and shame" element of the chosen method of requesting the information would clearly cause distress to the staff members concerned. This is especially so given the issues relating to one of those named in the request have already been addressed in relating ET proceedings and found to be unjustified.
20. The trust explained that the matters relating to the other named employee came to light during the ET proceedings; at this time this named employee no longer worked at the trust and had been the complainant's wife's former line manager. The trust stated that the complainant's wife took no issue with this former employee during either the ELC or the ET proceedings. During the hearing however the complainant's wife became aware of a disclosed email from the former employee to NHS Counter Fraud, which raised concerns that she may be on holiday abroad when she was reporting absent due to sickness. The former employee had queried whether any investigation or further action was required. The trust confirmed that this was the first time that the complainant and his wife became aware of this email and in fact it was never acted upon. However, since becoming aware of this email in the ET hearing in May, it understands that the complainant and his wife have not only sought further information from the trust but have also contacted the former employee's current employer requesting information from that public authority too.

21. The trust advised that it considers there is history of this complainant and his wife making distressing, unfounded accusations against trust staff members. One of the allegations in the ET proceedings was that a named staff member had caused the complainant's wife to miscarry. The trust confirmed that the named member of staff was extremely distressed by this allegation which she has had to deal with for nearly 18 months. Notwithstanding the seriousness of such an allegation, it was not pursued with any vigour at the ET hearing. The judgement records this at paragraph 31: "The Claimant alleges that no empathy was shown by her manager and that she was told that she had to be back at work the next Monday. She implied that [named redacted] knew or "would have known" about the miscarriage and she has even accused her of causing it. That accusation remains in her statement although [name redacted] accepting during this cross examination that there are many possible causes of a miscarriage and that [named redacted] did not know about it when she telephoned. The allegation that she caused the miscarriage has understandably upset [name redacted] and although it is not within our jurisdiction, we wish to record that this allegation was not actually seriously pursued by the Claimant's side."
22. The trust went on to say that the complainant submits frequent correspondence about the same issue or sends in new requests before the trust has had an opportunity to address his earlier enquiries.
23. For these reasons, it considers that it is clear that the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the trust and its employees. In terms of serious purpose or value, the trust considers that the request is of little public interest or benefit to the wider public. It believes the purpose of this request is to further the private aims of the complainant and his wife in relation to her workplace circumstances and the ET proceedings and to cause distress and embarrassment to the trust and its employees. The value of this request is therefore minimal. It stated that this is particularly true given the issues the request relates to are issues which have already been considered by the trust and addressed independently in the ET proceedings.
24. The trust advised that the complainant tried to complain during the ET proceedings that the trust's disclosure had been inadequate (despite the fact that the trust alone took on the burden of disclosure and producing the bundle) and that the trust had failed to respond to FOIA requests. The trust responded to all previous requests within the statutory time for compliance and said that the tribunal judgement stated at paragraphs 110-111 that it disagreed that disclosure was inadequate. It referred to 4,600 pages of disclosure in relation to the matter and that it identified no gaps in the evidence or where it thought documents probably existed.

25. Notwithstanding the vast disclosure in the ET proceedings and the judge's comments about disclosure of relevant documents, the trust stated that the complainant has continued to make FOIA requests concurrently and subsequent to the ET proceedings, in an ever-escalating manner. To the extent that information was required for the ET proceedings, any request for specific documents regarding the complainant's wife's employment by the trust should have been made during the ET proceedings. Those proceedings have now concluded and there is no longer any purpose in the complainant's persistence in his relentless mission to further burden trust staff with unreasonable requests for information.
26. It stated that many of the requests have overlapped and been repetitious in nature and there has been a considerable amount of correspondence, complaints and requests received, including items that were addressed to various individuals, as explained earlier in the notice. By way of an example, the trust referred the Commissioner to the request of 22 May 2017. It was made on 22 May 2017. The complainant then emailed the trust on 24 May 2017 to repeat the request and chased a response on 31 May, 2 June, 9 June and 13 June 2017, despite the fact that the deadline for providing a response had not passed. Much of this correspondence was sent to various individuals both internal and external. It argued that the complainant's conduct has placed a significant burden on the trust, not least because of the volume of correspondence but also due to resource incurred in trying to keep track of the correspondence received from various sources and confusion over whether the trust was replying to the latest piece of correspondence and whether or not the information requested had already been provided or responded to.
27. The trust ended by saying that it is unlikely that the complainant will be satisfied with any response that is provided and will continue to submit a number of overlapping and/or follow up enquiries, correspondence and requests.

### **The Commissioner's decision**

28. The Commissioner notes in this case that the complainant had made five requests for information, prior to the request which is the subject of this notice. She accepts that the number of requests in this case is not in itself significant and an obvious indicator of an applicant abusing their rights under the FOIA. However, that said, the number of previous requests is only one factor often considered by public authorities and the Commissioner herself when determining whether a request is vexatious or not. The Commissioner's guidance points out that a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. The context and history in which

a request is made is often a major factor in determining whether the request is vexatious. And, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, this will be a strong indicator that it is vexatious.

29. The Commissioner notes that the request relates to alleged bullying, racial and pregnancy discrimination within a specific area of the trust that the complainant's wife works or has worked. The request itself names two members of staff and makes or insinuates specific allegations of such wrongdoing against them. The tone and language of this request goes beyond the level of criticism that its employees should reasonably expect to receive via a request for information under the FOIA. The Commissioner understands that one of the named employees in this request was investigated by the trust and the Employment Tribunal and both found the complaints made of alleged bullying, racial and/or pregnancy discrimination to be wholly unjustified. The Commissioner is of the view that this request and its specific wording would cause an unjustified and disproportionate level of irritation and distress to those named, especially the member of staff already subjected to internal investigation and independent scrutiny at the tribunal.
30. The request was made days after the judge had delivered his verbal determination and reasons to the trust and the complainant. The trust has confirmed that this determination was final on 19 May 2017, not subject to change and ruled that there was no case to answer on all aspects of the complainant's wife claim. The issues had by this time been investigated by the trust itself and independently by the Employment Tribunal. The Commissioner is therefore satisfied that the request of 22 May 2017 was an attempt to reopen matters that had been finalised, determined and subject to extensive independent scrutiny and therefore amounts to unreasonable persistence. The request was specifically targeted at two members of staff within the trust against whom the complainant and his wife have some personal enmity. As stated above, one of those named had already been part of the ELC and ET proceedings and allegations made against them were determined to be unfounded. The request is essentially making the same accusations against that named individual; accusations that are completely unsubstantiated. In the Commissioner's opinion this request will therefore have caused further, unwarranted distress and upset to this individual. The Commissioner considers the most appropriate recourse here would have been to appeal the Employment Tribunal decision further or to have made a further ELC for the member of staff who is named in this request but was not the subject to the earlier ELC or ET proceedings.



31. The Commissioner is also of the opinion that the manner in which the complainant communicates with the trust amounts to intransigence, whether in the context of the requests he has made under the FOIA or other correspondence relating to the former ELC and ET proceedings. The Commissioner notes that the complainant was placed on restricted contact in November 2016 and now has only one member of staff within the trust that he should direct all correspondence to. These actions were taken due to the manner in which the complainant communicated and continues to communicate with the trust and the unreasonable burden on the trust in terms of time and resources as a result of the manner in which earlier communications were received.
32. The complainant routinely sent requests and correspondence to multiple recipients in the trust and a number of third party organisations. The trust found that it was spending an unreasonable amount of time trying to coordinate this correspondence and work out who should be responding, had someone already responded or whether a response was in fact required. The complainant was asked to refrain from sending his correspondence in this manner and was placed on restricted contact as a result. Despite this the complainant refuses to communicate in any other way and therefore has effectively rejected attempts from the trust to assist him in the best manner available and shown no willingness to engage with the trust appropriately.
33. Considering the wording of the request, the Commissioner considers there is also sufficient grounds in this case to regard the request as futile. The request continues to raise specific allegations of racial discrimination and bullying within an area of the trust where his wife works or has worked. The issues within the request therefore are more personal; individually affecting the complainant and his wife. The issues or complaints to which the request relates have already been conclusively investigated by the trust itself and subjected to independent investigation at the Employment Tribunal.
34. While the Commissioner accepts that the request has serious purpose and value to the complainant and his wife and that both appear to have strong feelings that she has suffered some form of bullying, pregnancy and racial discrimination, these are very personal issues which should and have been investigated through the appropriate mechanisms in place for such matters. The Commissioner is also of the opinion that the request repeats issues which have already been fully considered by the trust and subject to independent scrutiny and there appears to be an unwillingness to accept the findings of the ET proceedings. There, therefore, appears to be limited purpose or value to the wider public and even to the complainant and his wife in pursuing their stated aims.

35. For the above reasons, the Commissioner is satisfied in this case that section 14 of the FOIA has been applied appropriately.

### **Other matters**

---

36. The Commissioner wishes to point out that the complainant has continued to make information requests to the trust. The trust has issued a further refusal notice to the complainant citing section 14 of the FOIA and to draw the complainant's attention to the provisions of section 17(6) of the FOIA. Under section 17(6) a public authority does not have to issue a refusal notice if it has already given the applicant a notice, in relation to a previous request, stating that it is relying on section 14 and it would be unreasonable in the circumstances to expect the public authority to serve a further notice in relation to the current request.
37. The trust has informed the complainant that it will not respond to any further requests for information on the same topic in accordance with section 17(6) of the FOIA. This therefore means that the complainant should not expect any further refusal notices from the trust for any further requests for similar information or requests relating to the same topic.

## Right of appeal

---

38. 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)

39. 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.
40. 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 .....**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**