

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2021

Public Authority: Cumbria, Northumberland, Tyne and Wear
NHS Foundation Trust

Address: St Nicholas Hospital
Jubilee Road
Gosforth
Newcastle upon Tyne

Decision (including any steps ordered)

1. The complainant has requested information from Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust (the Trust) relating to diagnosis of mental health conditions, misconduct and board meetings.
2. The Commissioner's decision is that the request was vexatious and the Trust was entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 1 October 2020, the complainant wrote to the Trust and made a six part request for information under the FOIA. He requested information in the following terms:

"1) Could I please request a copy of any documentation regarding the ethics of diagnosing mental disorders

2) Could I request a copy of the Executive Directors board meeting minutes for the previous two meetings

3) Could I request any documentation or policy's that explain what constitutes for misconduct for the following professions, Consultant Psychiatrist, Occupational Therapist, Community Psychiatric Nurses

4) Could I request any documentation or policies regarding Doctors diagnosing patients they are not responsible for

5) Could I request an explanation in regards to whether a psychiatric diagnosis can be given to someone you have not seen in person

6) Could I request an explanation of whether it is possible to comment on a patient's mental health if a trust has an injunction order on any individual and has not seen an individual for 12 month"

5. On 9 October 2020, the Trust responded. It refused to comply with the request, citing section 14(1) of the FOIA (vexatious request) as its basis for doing so.
6. On 21 October 2020, the Trust carried out an internal review and wrote to the complainant upholding its original decision.

Scope of the case

7. On 25 October 2020, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner will determine whether the Trust has appropriately applied section 14(1) of the FOIA when refusing to comply with the request.

Background

9. The Trust has explained that since 2017, the complainant has made made numerous allegations of misconduct and complaints against staff at Cumbria Partnership NHS Foundation Trust (CPFT), which, is now North Cumbria Integrated Care NHS Foundation Trust (NCICFT).
10. The allegations include: that his medical records were 'tampered with', that there was a 'conspiracy' to falsely imprison and medicate him, that medical evidence was 'fabricated', and that he was had been subject to a number of fictitious diagnoses (including his alleged unlawful classification as a 'mentally disordered offender'). As well as allegations of general misconduct and various claims relating to the breach of the

Data Protection Act 2018 (DPA) / General Data Protection Regulation (GDPR). CPFT obtained a restraining order against the complainant in respect of his harassment of particular members of CPFT staff (who continues to remain the subject of his campaign and allegations). The restraining order prevented the complainant entering CPFT (unless a pre-arranged appointment had been made) and also prevented him contacting CPFT and several named members of staff and their families, including through social media platforms.

11. In October 2018, the Trust acquired North Cumbria Mental Health Services from CPFT. As part of the transfer of services, a number of staff previously employed by CPFT transferred to the Trust. CPFT also provided the Trust with patient records (including those of the complainant) for the purposes of providing care and treatment in the event that they were ever referred back to the service.
12. The Trust said that since November 2018, there have been two pre-dominant recurring issues raised by the complainant. These are accuracy of medical records and diagnosis. This has been followed by a 'significant' number of communications and requests for information from him in respect of the aforementioned allegations as well as concerns regarding the Trust's legal basis for holding his medical records. These requests were made under various access regimes, including the FOIA, the DPA / GDPR for access to information, right of rectification, and right of erasure. He has also made general complaints via the Trust's complaints and legal claims processes. The Trust said that CPFT remains engaged in legal action brought by the complainant in relation to the allegations mentioned above.
13. The Trust said that it has become apparent that no matter what response it provides or remedial action it takes / offers to resolve the complainant's recurring issues, he will not be satisfied and his requests and repeat behaviour (when processing requests) can be collectively viewed as a campaign against the Trust.

Reasons for decision

14. Section 14(1) of the FOIA states:

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

15. The term "vexatious" is not defined in the FOIA. In the Information Commissioner v Devon CC Dransfield (2013)¹ the Upper Tribunal commented that the dictionary definition of the word vexatious is only of limited use and that the question of whether a request is vexatious ultimately depends upon the circumstances surrounding the request. The Tribunal concluded that 'vexatious' could be defined as the

"..manifestly unjustified, inappropriate or improper use of a formal procedure".

16. The decision establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

17. The Upper Tribunal also considered 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.

The Upper Tribunal cautioned 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"

18. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

19. 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 requests². 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.

The Request

20. The Commissioner notes that complainant made a six part request predominantly focusing on information relating to diagnosing, staff misconduct and board meetings.
21. The Commissioner also notes from evidence provided by the Trust that, the complainant made consecutive requests in July, August and September (leading up to the request that is the focus of the Commissioner’s investigation). The requests consisted (on average) of 10 parts and predominately sought information about the handling of patient records transferred from CPFT, allegations of misdiagnosis, staff misconduct and ‘referrals’ to the Nursing and Midwifery Council (NMC), and action taken following board meetings.

Was the request vexatious?

Burden on the authority

22. The Commissioner has considered the Trust’s submissions relating to the ‘burden on the authority’ set out in his guidance. This is where the effort required to meet the request will be so grossly oppressive in terms of strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid intention of the requester.
23. In this case, the Commissioner considers the complainant’s requests have led to additional time and resources being utilised by the Trust dealing with the request. Any further time and resources required to process the request would therefore be a further burden on the Trust.
24. Evidence provided by the Trust shows that between 13 November 2018 and 9 October 2020, the complainant submitted 14 requests for

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatiousrequests.pdf>

information. He also sent a further 11 emails relating to these requests, including three emails asking the Trust to complete reviews of his requests.

25. The Trust has provided the Commissioner with evidence to demonstrate the burden imposed on it. Although this is not just in relation to requests made under the FOIA, e.g., it also includes requests that fall under the DPA, it clearly demonstrates the repeated pattern of correspondence.
26. The Trust further argued that it estimates that to date it has spent up to 112 hours (between 6 to 8 hours per request) and £2,800 in staff costs processing the complainant's requests and dealing with the associated communications from him. The Trust said that the number of requests and time spent dealing with them, does not take in to account certain unquantifiable time staff have spent, e.g., time spent communicating internally and externally about the requests, and reviewing requests (including previous requests) to understand the scope of them and the nature of his queries.
27. The Trust also said that the figure above does not take into account the 'substantial number of hours' worked by the Trust's external legal advisers, who, on account of the excessive level of claims, requests and allegations made by complainant, and given the added pressure on resources this has caused during the pandemic, have been engaged to provide legal support and assistance.

Purpose and value of the request

28. In relation to the serious purpose and value of the request, the Commissioner notes that the complainant has not stated any particular purpose for seeking the information at the time of making the request or whilst raising his complaint to him.
29. The Trust acknowledges that a requestor's motive is generally irrelevant when making a request under the FOIA and in isolation the complainant's request may not appear vexatious.
30. The Trust said that, at no point has it provided the complainant with treatment. It said that the complainant 'clearly has concerns' relating to treatment / services provided by CPFT. It acknowledged a wider public interest in assuring that the level of care and treatment provided by CPFT and now by the Trust is appropriate. However, the complainant has been repeatedly informed that his specific concerns regarding CPFT should be directed to CPFT.

31. The Trust said that, it has nevertheless made numerous attempts to address the complainant's concerns, without success. However, the complainant has made it expressly clear that he is making requests for information for the purposes of seeking justice against members of staff whilst they were employed by CPFT, who's behaviour was (in his view) unprofessional and amounted to misconduct. Because of this, it is clear to the Trust that the request in this case is part of a 'highly personalised campaign' the complainant has against CPFT, and as such there is little value or purpose in the request.
32. Having considered the Trust's arguments, the Commissioner's view is that the request in this case is a continuation of the complainant's repeated and excessive contact with the Trust about similar past issues. This includes requesting information that relates to previous complaints and issues that are not the Trust's responsibility, information about medical records from CPFT, and information about staff that transferred from CPFT.
33. The Commissioner also notes that whilst dealing with previous requests for information (FOI3840 and FOI3874), the Trust advised the complainant that, it will only be responsible for dealing with complaints received after 1 October 2019, all complaints prior to this point will remain the responsibility of CPFT. Indicating that the Trust has attempted to assist the complainant in resolving his issues, by re-directing him to where they would be most suitable addressed, that is by CPFT. He further notes that, CPFT has previously dealt with and is currently dealing with similar issues raised by the complainant. In context, the request therefore appears to be of little purpose.

Overlapping requests

34. The Commissioner considers that the Trust's explanations and the examples provided can be viewed as 'overlapping requests' as set out in his published guidance on vexatious requests³. This is where the requester sends in a new request before the public authority has had an opportunity to address their earlier enquiries.
35. The Commissioner notes that, the complainant sent a request for information to the Trust on 7 February 2020 seeking the qualifications of a member of staff that transferred from CPFT to the Trust. However, before the Trust could respond, he sent a further request on the same

³ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](#)

day, seeking the qualifications of another member of staff who also transferred from CPFT. He then sent the Trust a further request for information on 8 February 2020, which, consisted of 10 parts seeking further information about staff that transferred from CPFT.

36. The Commissioner also notes that, the complainant submitted a further 10 part request on 29 July 2020, seeking information including; allegations against staff that transferred from CPFT (of 'falsifying, deleting and fabricating' medical records and diagnosis), the transfer of medical records from CPFT, and the number of staff (that transferred from CPFT) that have been referred to the NMC. The complainant then asked the Trust to review its response on 28 August 2020. However, before the Trust could complete the review, the complainant submitted a further 10 part request for information on 30 August 2020. Seeking information relating to medical records and the Multi Agency Risk evaluation process (MARE). He then chased the Trust for the review on 9 September 2020, before withdrawing it on 11 September 2020. He then sent the Trust a further 10 part request on 13 September 2020, again seeking information about medical records, as well as about MARE and Multi Agency Public Protection Arrangements (MAPPA) processes.
37. The Trust said that the complainant's requests and correspondence (about requests) are 'extensive and overlapping'. Because of this, they have been difficult to manage and the Trust has created a spreadsheet to log / track requests and correspondence from him as well as its responses. Whilst it has attempted to reduce the burden by responding to multiple requests and correspondence at once, the drain on the Trust's time and resources remains 'significant'.

Unreasonable persistence

38. This involves situations whereby the requester is attempting to reopen an issue which has already been comprehensively addressed, or otherwise subject to some form of independent scrutiny.
39. The Trust said that the request in this case contains six questions that primarily concern the Trust's policies and procedures relating to establishing misconduct in certain roles, the ethics behind diagnosing mental disorders and the ability of medical professionals to provide psychiatric diagnosis. Whilst the request is framed as a list of generic questions and does not contain identical wording to his previous requests, the overarching theme is inherently similar to a number of previous requests from the complainant. Including; FOI4228, FOI4204, FOI4178, FOI4047, FOI4007, FOI3975, FOI3874 and FOI3840. The underlying motive of the complainant's requests relate to the

complainant's desire to obtain information in support of his ongoing personal dispute against CPFT in relation to the following:

- allegations of tampering of his medical records by staff,
 - various other allegations relating to the conduct of staff, including stalking, harassment and attempts to kidnap,
 - allegations of a fictitious diagnoses created by staff,
 - allegations that the complainant was unlawfully classified as a 'mentally disordered offender'; and
 - allegations of an unlawful referral to the MARE / MAPPA pathway.
40. The Trust said that the complainant has never been a patient of the Trust, and that it is only in possession of limited medical records in order to provide continuity of care should he be referred for services in the future. It said that it is evident that the fundamental issue which underpins all of the complainant's communications is that he believes the diagnoses recorded by staff whilst he was a patient at CPFT are fictitious. That they were created in conjunction with the other primary allegations (above) as part of a plot by members of staff to "*remove him from society*". It is this plot which he asserts he has uncovered, is continuing to uncover and is seeking to prove by means of the FOIA and other access regimes.
41. The Trust said that, despite the volume of requests, it has continued to provide the complainant with as much information and assistance as possible in order to help address his concerns. Including, providing comprehensive responses to his FOIA requests, subject access requests and wider queries, and offering to add supplementary statements to his records (where he disputes the content and has requested deletion of such information). For instance, his allegations of the 'unlawful diagnosis' of himself as a 'mentally disordered offender'. The Trust has informed him on a number of occasions that there is no reference of him being diagnosed or labelled as such within the records held by the Trust. It explained that the term is a protocol term used to describe a certain category of individuals who were subject to CPFT's MARE process (a process which no longer exists). As the complainant is no longer subject to the MARE process, he could not be considered a 'mentally disordered offender'.
42. The Trust also said that the complainant has made complaints to the regulatory body of members of staff (e.g., the NMC) and the ICO. These complaints have been investigated and closed with no action required. However, the complainant has continued to make complaints and extract information via FOIA requests and wider queries in relation to actions of CPFT staff before they transferred to the Trust. The Trust has

made it clear to the complainant (on many occasions) that responsibility for investigating these allegations lies with CPFT as the relevant employer at the time. The complainant has commenced legal action against CPFT.

43. The Trust said that the request in this case is the latest in a series of requests relating to the same issues raised by the complainant. It has repeatedly tried to address these issues, without success. Nevertheless, the complainant continues to engage in lengthy correspondence and makes further requests regarding the same issues. It said that the complainant is therefore unlikely to regard any response from it as adequate, and will simply generate more correspondence in return, which, will further impact the Trust's already limited resources.

Intransigence

44. The Commissioner considers that the Trust's explanations and the examples above are indicative of an intransigent attitude from the complainant. This is where the requester takes an unreasonably entrenched position, rejecting attempts to assist and shows no willingness to engage with the authority.
45. In this case, the Commissioner considers the complainant's unwillingness to limit his requests for information, e.g., not seek information about members of staff who transferred from CPFT, his unwillingness to refer his complaints about CPFT to CPFT (and not the Trust), and where his issues have already been addressed, to demonstrate an intransigent attitude.

Unfounded accusations

46. The Trust said that the main focus of the complainant's requests and correspondence surround unfounded accusations of misconduct by members of staff formerly employed by CPFT. It said that he has made further unfounded accusations, suggesting that these members of staff are attempting to "cover their tracks" by 'lying' to the NMC and ICO. The complainant has also alleged that the Trust is unlawfully concealing medical records and is deliberately breaching data protection obligations in order to cover up CPFT's "depraved plot".
47. The Commissioner notes that in emails to the Trust dated 5 May 2020, where the complainant makes a complaint and 'right to rectification request', he said "[redacted] is not a suitable person to be impartially internally being involved in this complaint, due to her lying to the Information Commissioners Office whilst hiding the shady conduct of

this meeting.” and “I am making an official complaint in to your employee you inherited from Cumbria Partnership NHS Foundation Trust [redacted]. ... so with his fitness to practice still being looked in to after [redacted] lied to the Nursing and Midwifery Council, I reckon this sort of conduct should be investigated to prevent this man abusing his position ever again ... someone will prevent this shameful excuse of a human being, ever doing this to anyone ever again”.

48. The Trust also said that, when communicating, the complainant has suggested on numerous occasions that staff transferred from CPFT have engaged in activity similar to and / or have displayed personality traits of Adolf Hitler, Harold Shipman, Ted Bundy and Jimmy Saville. It said that he has also provided ‘multiple in-depth documents’ in support of such assertions, which, contain his own analysis of specific members of staff and includes his own psychiatric diagnoses.

Abusive or aggressive language

49. The Trust said that, despite having now provided the complainant with significant assistance over two and half years, the tone and language of his correspondence is often abusive and critical of the Trust’s actions and ability to deal with his requests, and continues to go beyond the level of criticism that a public authority and its employees should reasonable expect to receive.
50. The Trust said that communications from the complainant regularly contain derogatory statements about members of staff (former CPFT staff and staff dealing with his request). They also include threats to end individual’s careers and various unfounded allegations.
51. The Commissioner notes that, in a 10 part request to the Trust made on 28 July 2019, the complainant said *“Has there ever been an example of your Head of Information Governance being caught out lying to the Information Commissioner Office, like what happened with [redacted] of CPFT”.* He also said *“Will staff in Cumbria once you take over, still be able to stalk patients on local parks and write entries on medical records regarding such stalking incidents, when you take over”.*
52. In a further 10 part request to the Trust made on 8 February 2020 (FOI4047), the complainant said *“What safeguards have you taken to make sure staff from Cumbria no longer stalk people on local parks when they are minding their own business”.* In a further 10 part request to the Trust on 29 July 2020 (FOI4178), the complainant said (when referring to the Trust’s response to a previous request and his knowledge of data protection legislation) *“I am clued up on this law as well as data protection laws . A certain individual did have a whinge*

about this on her submission ... If this individual did not decide data protection laws did not apply to her and her cronies, I wouldn't of had to learn how all this works... "

53. The Commissioner also notes that, upon receiving the Trust's response to a further 10 part request (FOI3975), the complainant replied on 8 January 2020 saying *"that response was [an] absolute disgrace."*, and *"you said you did not hold the information regarding the complaints refused for 618 days ... Please find attached the information so that you now hold it. If your trust is happy to let these people loose on the Cumbrian public with such serious allegations against their names, that is your choice"*.
54. Upon receiving the Trust's response to another request (FOI4087), the complainant replied on 27 April 2020 saying *"I'm just wondering weather this meeting was a silent meeting where nobody spoke, mist only 12 pages long, these meetings are usually over 300 pages ... Could I have the actual full copy please"*.
55. Upon receiving the Trust's response to a further 10 part request (FOI4228), and also the request that is the focus of the Commissioner's investigation (FOI4238). The complainant wrote to the Trust on 22 October 2020 and said *"A full response to the refused 15 freedom of information act questions will be given ... Some of the answers to some of the questions are obvious they are that ridiculous of questions, but by the statement made regarding being accurate by this kidnapping team on 8th January 2018, would change the answer to accommodate this accuracy story ... 31st January 2018 a Caldecot Guardian and Company Secretary lying under oath in a British Court of Law, some very serious lies as well taking into consideration the sickening plan these two were plotting whilst standing in the witness box"*

The Commissioner's view

56. In his published guidance on vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. He also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
57. While most people exercise this right responsibly, he acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

58. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services (including during the pandemic) or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
59. The Commissioner has considered the Trust's evidence and has not received any submissions from the complainant.
60. The Commissioner considers that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden. However, when considered in the context and history of the complainant's contact with the Trust, the Commissioner does not consider that the purpose of the request justifies the disproportionate effect on the authority.
61. The Commissioner considers that responding to the request is likely to cause disruption, harassment and distress to staff. Particularly as the Trust has previously responded to requests for similar information from the complainant, e.g., information relating to board meetings, misconduct and certain roles, diagnosis and the ability of medical professionals to provide psychiatric diagnosis. However, the complainant has followed up the Trust's responses to those requests with further correspondence and requests of a similar theme and does not appear to be satisfied with any response received. This can be considered as an inappropriate use of information rights under the FOIA.
62. The Commissioner has seen no evidence to suggest that if the request was processed and the information was disclosed, it would satisfy the complainant or bring an end to his correspondence with the Trust about its handling of the request. He also notes that despite the Trust sign-posting the complainant to CPFT, so that he may take up his issues directly with it, he instead continues to make requests to the Trust about CPFT staff that have transferred to it. Even though the complainant himself has not received any treatment by the Trust.
63. Conversely, he considers that the complainant may use the requested information to create further points of dispute. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate or unjustified level of disruption, irritation or distress.
64. The Commissioner considers the Trust was correct to deem the request as vexatious and that section 14(1) of the FOIA is engaged.

Right of appeal

65. 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

66. 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.
67. 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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