

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 10 February 2023

Public Authority: Liverpool University Hospitals NHS Foundation Trust

Address: Prescot Street
Liverpool
Merseyside
L7 8XP

Decision (including any steps ordered)

1. The complainant requested "all documentation re the Executive Groups". Liverpool University Hospitals NHS Foundation Trust (the Trust) refused to comply with the request under section 14 FOIA as it considers it to be vexatious.
2. The Commissioner's decision is that the Trust was entitled to rely on section 14(1) of FOIA to refuse this request.
3. The Commissioner does not require further steps.

Request and response

4. On 19 October 2022 the complainant made the following request for information under the FOIA for:
"I request copies of all documentation re. the Executive Groups."
5. The Trust attempted to clarify the request but the complaint confirmed he required all groups and all dates.
6. On 16 November 2022 the Trust refused to comply with the request citing section 14 FOIA (vexatious requests) and regulation 12(4)(b) EIR (manifestly unreasonable requests). It also referred to the cost limit under section 12 FOIA.

7. The complainant requested an internal review. This was provided on 9 December 2022, upholding the application of section 14 FOIA and regulation 12(4)(b) EIR.

Scope of the case

8. The complainant contacted the Commissioner on 13 December 2022 to complain about the way the request for information had been handled.
9. The Commissioner asked the Trust to clarify whether it was handling this request under FOIA or EIR and upon what basis it was refusing the request.
10. The Trust subsequently confirmed that it was refusing to comply with the request under section 14 FOIA on the basis that it considers the request to be vexatious.
11. The Commissioner has therefore considered whether the Trust was correct to refuse the request under section 14 FOIA. However for completeness even if parts of the requested information were environmental, under regulation 12(4)(b) EIR a manifestly unreasonable request on the grounds the request is vexatious would apply in the same way.

Reasons for decision

12. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

13. Section 14(1) of FOIA states that:

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

14. The term “vexatious” is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified,

inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

15. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. Dransfield 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
17. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
18. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".
19. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
20. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.”

Serious purpose and value

21. The Trust appears to acknowledge that there is a serious purpose and value in the requested information as it explained that a summary of the business discussed at these groups is provided on a monthly basis to the Trust Board. It confirmed Trust Board minutes are pro-actively published on a monthly basis and are already accessible to the public via the Trust website
22. However the Trust does not consider the diversion of resources to respond to this request would be in the best interest of the public, considering the significant operational pressures it operates under.

Breadth of the request

23. The Trust explained that this specific request was for all documentation relating to Executive Groups (despite the fact it had attempted to engage with the complainant to clarify the request). It went on that the Trust was formed in October 2019 and had six relevant groups at the time the request was submitted. It said that there are 257 meeting packs falling within the scope of the request that had approximately 150 pages each. It said that it would be necessary to review every page in each pack in order to identify any information that would have potential engagements of exemptions under FOI/EIR.

Burden on the Trust

24. The amount of time required to comply with the request would place a significant strain on the Trusts resources and require it to divert staff away from delivering its mainstream, core functions in provision of NHS care, placing a disproportionate and grossly oppressive burden on the Trust.

Pattern of requests/duration

25. Since April 2022, the applicant has submitted 28 EIR/FOI requests; 9 of which had been made in the 60 days prior to this request which have contributed to the aggregated burden. It said that there had been several occasions when the requester had submitted requests in quick succession resulting in multiple requests being open in parallel with internal reviews and/or ICO complaints regarding previous requests.
26. In the spirit of providing advice and assistance, the Trust held a meeting with the complainant in September 2022 in an effort to gain clarity to assist with understanding regarding the content of the frequent

requests. During the meeting the complainant advised he wished to know everything about the Trust meaning, unfortunately, at that time, it was unable to establish a way to assist the complainant with a solution to reduce the frequency of the requests. Whilst this pre-dates the request in this case, before citing section 14 in relation to this specific request, several attempts were made by the Trust to assist the complainant to narrow the scope of the request. These attempts were unsuccessful, and the applicant advised 'When I stated all I meant all - i.e., all groups all dates'.

Frequency or overlapping requests

27. The Trust explained that the complainant had submitted two subsequent requests about this topic and the Trust has been subject to frequent correspondence and new requests before the Trust has had an opportunity to address earlier enquiries, open internal reviews and ICO investigations. The Trust anticipates that this pattern will continue in the future.
28. In particular it is relevant to note that one of the subsequent requests was a refined request of the information requested in this case. The Commissioner is aware that the Trust has responded to the less burdensome refined request by providing information to the requester (with some redactions made under section 40 and 43 FOIA). Whilst the refined request is not the subject of this Notice the Commissioner considers it relevant to note that the Trust has subsequently been willing to comply with a less burdensome request on this subject matter.

Intransigence

29. The Trust argued that the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the Trust.

The Commissioner's view

30. Given the breadth of the request in this case this would impose a significant burden upon the Trust to review for disclosure 257 meeting packs containing approximately 150 pages. This is on top of the burden of 28 previous FOIA/EIR requests made since April 2022 and 9 of which were made within 60 days of the request which is the subject of this Decision Notice.
31. Despite efforts made by the Trust to engage with the complainant, including a meeting which was held in September 2022, the complainant does not appear to be willing to temper their approach. Whilst the Commissioner is aware that a refined request on this subject matter was subsequently made and information was subsequently provided the

complainant still wishes to pursue this wider request (despite an implied acceptance on their part that a refined request was necessary). This demonstrates intransigence as the Trust has claimed and the Commissioner accepts that this also suggests this pattern will continue.

32. Whilst there is clearly a serious purpose and value in the requested information, this is somewhat met by the information which is proactively published and by the Trust subsequently responding to and providing information in relation to a more focussed request made by the complainant on this subject matter. Whilst the latter post-dates the request in this case, it is so inextricably linked to this request, the Commissioner considers it is relevant to refer to in addition to the proactive disclosures.
33. Taking a holistic view of this request, the Commissioner is satisfied that it was correctly categorised as vexatious under section 14 FOIA.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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.....

Gemma Garvey
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Wycliffe House
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