

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

### **Decision notice**

**Date:** 30 March 2023

**Public Authority:** Liverpool University Hospitals NHS Foundation Trust

**Address:** Prescot Street  
Liverpool  
Merseyside  
L7 8XP

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

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1. The complainant made a request on 23 January 2023 for minutes of the Executive Assurance Groups between October to December 2022. The Trust refused to comply with the request as it considers it to be vexatious under section 14 FOIA.
2. The Commissioner's decision is that section 14 FOIA was correctly relied upon in this case.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 23 January 2023, following on from the Trust's response to another FOIA request handled under Trust case reference number 8656, in which it provided redacted minutes for Executive Assurance Groups between June to September 2022, the complainant requested:  
  
"Can you please also provide me the equivalent information for the meetings of all the groups for the period October - December 2022?"
5. The Trust responded on 17 February 2023. It refused to comply with the request under section 14 FOIA as it considers it to be vexatious.

6. The complainant requested an internal review on 20 February 2023. On 10 March 2023 the Trust provided the internal review. It upheld its response applying section 14 FOIA to this request.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 11 March 2023 to complain about the way the request for information had been handled.
8. The Commissioner has considered whether the Trust was correct to refuse to comply with the request under section 14 FOIA.

## **Reasons for decision**

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9. 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.

10. 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.

11. 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.
12. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. 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).

14. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, 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.
15. 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".
16. 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.
17. 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 is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."
18. The Commissioner is aware that the request in this case stems from a previous request made on 19 October 2022 (Trust reference 8602) which was the subject of the Decision Notice issued under reference IC-207629-X4N3. That request was for, "I request copies of all documentation re. the Executive Groups." The Commissioner found that section 14 FOIA had been correctly engaged by the Trust in relation to

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

the 19 October 2022 request. This is however the subject of an appeal to the First-tier Tribunal Information Rights.

19. The Commissioner is also aware that the Trust responded to a subsequent refined request made for minutes of Executive Assurance Groups between June to September 2022 which was handled under Trust reference 8656. In response to this request the Trust provided the requested information with redactions made under section 40 and 43 FOIA.
20. The complainant has then gone on to make this request for the same minutes for the months October to December 2022 which is the subject of this Decision Notice.

### **Serious purpose and value**

21. The Trust accepts that there is a serious purpose and value behind the information being requested, however it considers that the key updates from all Executive Assurance Groups which are already proactively published within the Trust Board Minutes are sufficient to inform the public.

### **Burden on the authority**

22. The Trust has argued that it has become overwhelmed and is unable to sustain responding to the number of requests the complainant has made in quick succession.
23. It said that in less than 12 months the complainant has submitted a total of 31 EIR/FOI requests; 9 of these had been within 60 consecutive days.
24. The Trust anticipates that the pattern and duration of the requests indicate they are likely to continue in the future.

### **The breadth of the information sought**

25. On this occasion the information falling within scope (18 documents / confirmed minutes) was considered vexatious by the Trust when weighed against the serious purpose and value to the public and the wider context and history.

### **Frequency or overlapping requests**

26. The Trust said that the complainant had submitted a total of three requests relating to the topic (Executive Assurance Groups) spanning the period June 2022 to December 2022. These were Trust reference 8602 (the request which is the subject of the Decision Notice on IC-207629-X4N3), 8656 (this is the request for Executive Assurance

Groups between June to September 2022 to which the Trust responded providing the information with redactions under section 40 and 43 FOIA) and 8789 (this request).

27. In addition, the Trust has been subject to frequent correspondence and new requests before it has had an opportunity to address earlier enquiries.

### **Grossly oppressive burden**

28. The Trust has argued that the request appears to be a fishing expedition imposing a burden on the Trust to sift through a substantial volume of information to isolate and extract the relevant details – creating a burden by requiring the Trust to spend a considerable amount of time considering any exemptions and redactions.
29. The amount of time required to review the documents within the scope of this request would place a significant strain on the Trust's resources when taking into account the wider context and history. This would again 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.

### **The Commissioner's view**

30. The Commissioner upheld the Trust's application of section 14 FOIA to the wider request made on 19 October 2022. Since then the Commissioner is aware that the complainant made a refined request for minutes of Executive Assurance Groups between June to September 2022 to which the Trust responded providing information in a redacted format (exemptions at section 40 and 43 FOIA were applied to make the redactions). Whilst the complainant refined the request to enable the Trust to respond, by making multiple refined requests this is going to impose an aggregated burden upon the Trust.
31. Whilst 18 documents relevant to this request would not impose a significant burden alone, it is the combined burden of 31 requests over a period of less than 12 months and 9 of which being made within 60 consecutive days which is relevant. Given under section 10 FOIA a public authority is allowed 20 working days to respond to a request, making 31 requests within a 12 month period amounts to over two per month on average demonstrating the overlapping nature of requests.
32. The Commissioner also accepts that responding to this latest request is very unlikely to bring the matter to resolution for the complainant.

33. Whilst there is clearly a serious purpose and value in the requested information, this is somewhat met by the information which is proactively published by the Trust.
34. 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

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

36. 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.
37. 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  
Senior Case Officer**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**