

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2022

Public Authority: Devon Partnership NHS Trust
Address: Wonford House Hospital
Dryden Road
Exeter
EX2 5AF

Decision (including any steps ordered)

1. The Commissioner's decision is that Devon Partnership NHS Trust is entitled to refuse the complainant's request about its consent policy under section 14(1) of FOIA as the request is vexatious.

Request and response

2. On 28 July 2022 the complainant submitted the following request to Devon Partnership NHS Trust ('the Trust'):

"Can you please provide me with a copy of your Consent Policy that would have been in place in 2003 in Torquay Mental Health Services?

Can you please confirm that/whether consent is required prior to the administration of an actuarial risk assessment instrument?

Can you please confirm that/whether consent is required prior to assessment of a person's personality when using any kind of instrument that has been developed to assess personality?

3. The Trust's final position was to refuse this request under section 14(1) of FOIA.

Reasons for decision

4. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
5. Access to information is an important constitutional right and so engaging section 14(1) is a high hurdle. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
6. The themes the Commissioner considers when deciding whether a request can be categorised as vexatious are: the burden (on the public authority and its staff); the motive (of the requester); the value or serious purpose (of the request); and any harassment or distress (of and to staff). But those broad themes are not a checklist and are not exhaustive; the Commissioner takes into account all the circumstances in order to reach his decision.
7. In its refusal of the request the Trust advised the complainant as follows:
 - The complainant had submitted a similar request on 22 December 2020. The Trust had addressed those questions and provided a copy of the consent policy. Following requests for two internal reviews, the Trust applied section 14(1) to that request. The Trust said it had nothing to add regarding the questions about the consent policy in 2003.
 - The Trust went on to discuss the complainant's use of FOIA more generally. It noted that it had received 10 requests from the complainant in the last two years. All the requests were related to the same topic, namely psychopathy treatment and consent in relation to HARE PCL:SV [a psychopathy checklist]. The Trust said that in the spirit of FOIA it had answered the complainant's questions where it was able to. The complainant had requested internal reviews and, on some occasions, requested further internal reviews.
 - The Trust advised that the complainant's responses to the Trust often contained language of a hostile nature. The Trust said that this constituted harassment of particular staff and was part of a campaign against the Trust. It provided the following example.

"As the Hare PCL:SV was not valid for use in the UK in 2003, let alone that no consent was sought, do you mind now addressing

the matter of this perfidious incompetence and abuse of dignity, autonomy, liberty and well-being, [name redacted] needs to start to address the matter as abuse has taken place and there is evidence of incompetence.”

- The Trust went on to say that on 14 December 2020 the complainant had emailed and clearly stated that the Trust was incompetent. On 21 December 2020 the complainant had claimed that the Trust continued to be hostile and to obfuscate FOIA matters. The Trust said that it had received various other emails from the complainant in relation to other FOIA requests in which they had called the Trust and its staff incompetent, deceitful and corrupt.
8. The Trust upheld its refusal in its internal review of 30 August 2022. It again noted that the complainant used hostile language in written and verbal correspondence with staff across multiple functions. The Trust said the complainant was “targeting a specific consults [sic] quoted in the request” which it considered was part of a deliberate campaign against that individual and the Trust.
 9. In a submission to the Commissioner, the Trust first advised that it has received seven requests from the complainant between the 28 July 2022 and 23 September 2022. The Commissioner has noted this but can only consider the situation as it was at the time of the request under consideration here.
 10. The Trust went on to advise that “the request” followed two themes. The first was in relation to HARE PCL:SV assessments. The complainant’s interest in those assessments has been a long standing issue for the Trust dating back to 2009. It says that multiple departments and reviews have taken place to support the complainant. Each time specific staff are targeted.
 11. The second theme is around “Supervision Registers”. The Trust said it did respond to “these request” and provided a response as it appeared initially that they were not related to HARE PCL:SV. However, after providing a response “there was scope creep to link the two topics together”. In the Trust view, the complainant was continuing to attempt to harvest information to harass staff as part of a deliberate campaign.
 12. The Commissioner does not consider the Trust’s submission to him to be quite clear; the Trust may be discussing the request in this case **and** six subsequent requests. This complaint concerns only the request of 28 July 2022.

13. The Commissioner notes that in November 2020 he found against the Trust when it applied section 14(1) to a previous request the complainant submitted to it. That request was also about HARE PCL:SV. In that case the Trust did not provide the Commissioner with sufficient evidence that the request was vexatious.
14. However, in the current case the Commissioner is persuaded from the Trust's correspondence with the complainant, and to a degree its submission to him, that at the point of this request the Trust was entitled to rely on section 14(1). At that point the complainant had been sending correspondence to the Trust for a number of years on broadly the same matter - the HARE PCL:SV. And the complainant's interest in that matter may have stemmed from an incident in 2003, ie some 19 years previously. While these matters remain of interest to the complainant, they have minimal wider public interest. Given the cumulative burden on the Trust of responding to the complainant's previous requests, the Commissioner does not consider that the value of the current request at the point it was submitted justified any further burden to the Trust. Particularly as the Trust appears to have answered the complainant's questions about consent previously.
15. Perhaps more importantly, the Commissioner has noted the tone and language of some of the complainant's correspondence to the Trust. He agrees with the Trust that the effect of this language is to harass its staff. FOIA was not introduced to enable members of the public to cause an undue burden to public authorities or to harass and distress public authority officers.
16. The Commissioner is therefore satisfied that the Trust is entitled to refuse the complainant's request under section 14(1) of FOIA as the request is vexatious.
17. The Commissioner notes that a public authority that has issued an applicant with a section 14(1) refusal, as in this case, is not obliged to issue a further section 14(1) refusal if it receives more requests from the applicant on broadly the same matter or that evidence the themes discussed in this notice.

Right of appeal

18. 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

19. 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.
20. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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