

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2024

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle Upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has requested information relating to an inspection of the Northern Care Alliance. The Care Quality Commission (“the public authority”) refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA.
2. The Commissioner’s decision is that to comply with the request would impose a grossly oppressive burden on the public authority. Therefore it was entitled to refuse the request under section 14(1).
3. The Commissioner does not require further steps.

Request and response

4. On 5 September 2023, the complainant requested:

"I would like your regulator as part of a Freedom of Information Request to provide me with the information which your own website (part of which I've included below) states you gather prior to any inspection by the CQC from;

1. "staff who raised concerns;
2. information from the care provider," which specifically relates to your 2022 inspection of the Northern Care Alliance (NCA) please?

Given the recent emergence of significant undetected patient harm and staff bullying being currently exposed by whistleblowers across the NHS, including the murder of patients all of which continued despite the activities of our nation's healthcare regulators, I wish to reassure myself that the NCA has provided your public body with a sufficient volume and quality of information expected by the CQC prior to its most recent 2022 inspection taking place."

5. The public authority responded on 26 September 2023. It refused to comply with the request, citing section 14(1), a position it upheld at internal review.

Reasons for decision

Section 14(1) – vexatious requests

6. Section 14(1) of FOIA states:

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

7. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious in the sense that it is an abuse of FOIA process and secondly where compliance with the request would incur an unreasonable burden on the public authority both in terms of costs and the diversion of resources. The public authority is relying on the second theme of vexatiousness in this instance.

8. In its response to the complainant, the public authority explained:

"we have received over 500 documents from Northern Care Alliance NHS Foundation Trust prior to and during the inspection process. Some of the documents will contain personal information about staff and/or patients, sensitive information about the running of the hospital and information regarding our regulatory processes which could cause prejudice if disclosed in the public domain. We would have to examine all documents manually to establish what it is, whether it can be shared and whether it needs to be redacted."

9. In order to refuse a single request under section 14(1), the public authority must demonstrate that compliance with the request would impose a grossly oppressive burden. It's a high bar to engage and the Commissioner considers its most likely to be the case where public authorities can demonstrate:

- the requester has asked for a substantial volume of information; and
- there are real concerns about potentially exempt information, which it is able to substantiate, if asked to do so by the Commissioner; and
- the potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

10. The Commissioner has reminded himself of what is actually being requested here; information from North Care Alliance which relates to the 2022 inspection and correspondence from staff who have raised any concerns. The public authority has confirmed this is over 500 documents; the Commissioner also understands that some of these 500 files are compressed files, which hold multiple folders of information.

11. The public authority has also confirmed that it would:

"need to manually review each one to identify information that would need to be protected from public disclosure. Where the owner of the information held is Northern Care Alliance NHS Foundation Trust, we would also need to consult with them to prior to the release of any information and this would cause significant disruption to our limited resources and take staff away from their regular duties."

12. Because the request is broad, the Commissioner doesn't see how the public authority could review the information, to prepare it for disclosure, any way other than a manual review of each item individually.

13. Section 14(1) is a high hurdle to engage but must be guided by the limits outlined in section 12 (cost of compliance exceeds appropriate limit). For the public authority, this limit is 18 hours.
14. When applying section 12, a public authority must provide a reasonable estimate as to how long compliance with the request would take. When applying section 14, a public authority must provide a similar reasonable estimate, bearing in mind that for compliance with a request to represent a 'grossly oppressive' burden, it must exceed the limit under section 12.
15. The public authority has provided no such estimate and it should have. Just because a request is broad and captures a large volume of information, doesn't mean that a public authority should forgoe any type of analysis as to how long complying with the request would actually take. This estimate will help quantify to the requestor just how burdensome compliance with their request would be.
16. The public authority could have taken one of the compressed files referred to in paragraph 10 and reviewed it for disclosure, bearing in mind any information that would be exempt under section 40 (personal information), section 31 (law enforcement) or section 41 (information provided in confidence). The public authority could have then taken the time it took to review that one folder and multiplied it by 500, to obtain an estimate.
17. Even though it's not provided details of any such sampling exercise, the Commissioner is confident that this review wouldn't be short. The public authority has confirmed it holds a 'significant amounts of information for each of the services that we regulate.'
18. The Commissioner has also considered the actual inspection process¹ that the information in question relates to. The public authority's website² states:

"The number of evidence categories that we need to consider and the sources of evidence we'll collect varies according to:

- The type or model of service

¹ [What we will inspect: NHS trusts - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk/what-we-will-inspect/nhs-trusts); [What we will inspect: NHS trusts - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk/what-we-will-inspect/nhs-trusts)

² [Evidence categories - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk/evidence-categories).

- The level of assessment (service, provider, local authority or integrated care system).”
19. The Commissioner is aware that the Northern Care Alliance is responsible for the Salford Care Organisation, Oldham Care Organisation, Rochdale Care Organisation and Bury Care Organisation.
 20. Taking into account the volume of information concerned here, and the broad nature of the request, the quickest method of retrieval appears to be a manual search of records held across all information within scope.
 21. Whilst the public authority has not put forward a figure, the Commissioner is satisfied that it would have to manually review a substantial amount of information (the majority of which the Commissioner is satisfied would be exempt under the exemptions listed in paragraph 16); the Commissioner is satisfied that compliance with the request would exceed 18 hours.
 22. When applying section 14(1) in this way, a public authority must always balance the burden that compliance with the request would cause with the value and purpose that the request represents.
 23. There’s always a public interest in public authorities being as transparent as possible. The public authority’s role is to regulate and uphold standards in health and social care in England its important its as transparent and possible about how it does so.
 24. The Commissioner also recognises that there are those, including the complainant, who have concerns about the safety, efficiency and standards of the service that North Care Alliance offers.
 25. However, compliance with the request would impose a considerable burden and the public authority believes its report³ into the 2022 North Care Alliance inspection addresses the public interest in this request.
 26. Furthermore, in its internal review outcome the public authority explained to the complainant:

“CQC’s website holds information which explains to providers what information we collect from NHS Trusts, all of this information, along with our inspection evidence and the views of employees, users of the service and their relatives is all considered by our inspection teams prior to the publication of our reports.

- <https://www.cqc.org.uk/guidance-providers/nhs-trusts/cqc-insight-nhs-trusts>
- <https://www.cqc.org.uk/guidance-providers/nhs-trusts/how-we-monitor-inspect-regulate-nhs-trusts>”

These are the footnotes the Commissioner refers to in paragraph 18.

27. Bearing in mind that most of the information in question would be exempt, the Commissioner doesn't consider compliance with the request would sufficiently add to the information that's already in the public domain, to warrant the burden upon the public authority. For that reason, he finds the public authority was entitled to refuse the request under section 14(1).

Section 16 – advice and assistance

28. When utilising section 14(1) in the way described, a public authority must offer the requester reasonable advice and assistance, with the aim of the requestor submitting a less burdensome request.
29. In its refusal notice, the public authority offered advice and assistance in the form of offering to conduct an internal review into its decision and of the right to complain to the Commissioner. Whilst these are requirements of section 17 (refusal of request), they do not class as reasonable advice and assistance under section 16.
30. However, in its internal review outcome the public authority did suggest that the complainant study the links it provided with a view to requesting a specific document that was used during the investigation process. Therefore, the Commissioner is satisfied that the public authority has complied with its obligations under section 16.

Right of appeal

31. 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

32. 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.
33. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF