



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0089, EA/2013/0090, EA/2013/0120,
EA/2013/0133, EA/2013/0134, EA/2013/0165,
EA/2013/0166, EA/2013/0201

Appellant: Mrs D Havercroft

Respondent: The Information Commissioner

Judge: NJ Warren

Member: A Chafer

Member: G Jones

Hearing Date: 17 January 2014

Decision Date: 10 February 2014

DECISION NOTICE

A. Background

1. Mrs Daphne Havercroft campaigns on health issues, especially in the South West of England.
2. It is public knowledge that the NHS in Bristol has had its problems. There was the scandal in relation to child heart surgery some years ago which led to the Kennedy Report. More recently there have been problems in pathology and histopathology. The material before us includes careful and expert expressions of concern (see e.g. 120/pages 25-27. It also includes, in witness statements from members of a campaign group, powerful expressions of the personal impact of mistakes made in this specialism.

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3. All this led, eventually, to an enquiry chaired by a leading barrister Ms Jane Mishcon. The size of the enquiry can be gauged from the fact that it cost £720,000 and worked from June 2009 to December 2010. In 2012 the enquiry panel returned to Bristol for a visit to the histopathology department and a public meeting in order to report back to the two NHS Trusts concerned on the extent to which recommendations had been implemented. The panel concluded that much had been done and there was evidence of a genuine commitment to implement recommendations and also of real progress. They acknowledged that it takes time to adjust to new work cultures and environments. They made suggestions for further action. (See 90/pg 28-29)
4. Mrs Havercroft has made many requests under the Freedom of Information Act (FOIA) to various parts of the NHS. Eight of them have been refused on the ground that they are vexatious. In respect of all eight, Mrs Havercroft unsuccessfully complained to the Information Commissioner (ICO). She now appeals to the Tribunal.

B. Some Procedural Matters

5. Originally Mrs Havercroft asked for a hearing of the appeals. The eight cases, together with two other appeals lodged by Mrs Havercroft, were listed to be heard in Bristol on 16 and 17 January. Mrs Havercroft then had a change of mind. On 23 November 2013 she emailed the Tribunal. She said that she had lodged the appeals on behalf of the South West Whistleblowers Health Action Group and that the group was content for the Tribunal to decide the appeals without a hearing. That statement appeared above her name. The ICO and the public authorities involved were similarly content. We conclude that all parties consent to a decision without a hearing and we are satisfied that we are able to decide the case fairly without one.
6. It is necessary to say something about another appeal lodged by Mrs Havercroft which was heard by a Tribunal sitting in Bristol in April 2013. They found that a request for information that she had made to the North Bristol NHS Trust in

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November 2011 was vexatious. Mrs Havercroft disagrees with that decision ([EA/2012/0262](#)). The ICO and some other respondents have asked for that Tribunal's decision to be included in our papers. They also asked us to include in our considerations the documents which were before the last Tribunal.

7. From the point of view of the respondents we can see the attraction of this. We on the other hand already had hundreds of pages of documents. It did not seem to us to be proportionate to read through another hefty bundle relating to a request for information which was not before us. We did read the bundle of documents produced by Mrs Havercroft to the April Tribunal to make sure that she was not disadvantaged. We also read the decision of the Tribunal in [EA/2012/0262](#) but we did not consider that it had any material effect on our deliberations or on our decision.
8. At one stage Mrs Havercroft suggested that we should transfer all her cases to the Upper Tribunal so that it could give an authoritative decision but in our judgement the issues raised by these appeals are proper for the consideration of the First Tier Tribunal.
9. We have considered each of the cases separately taking care to ensure that our decision on an early request was not influenced by later events. We have not stinted in reading hundreds of pages of evidence over two days. In the end, our reasoning in each of the separate cases was so similar that, having regard to Rule 2 GRC procedural rules, it seemed reasonable for us to give our reasons generically.
10. This applies even though the requests involve different parts of the NHS. It seemed initially to us that there was a risk of wrongly attributing a history of past dealings and of perhaps becoming confused about the burden on a public authority, unless we organised our deliberations into different compartments for each different authority. It became apparent to us, however, that there were no material differences between the respondents. This was because Mrs Havercroft had a history of similar dealings with all of them – and perhaps with other parts of the

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NHS in Bristol. See for example the tables at 120/pages 114-120 and 90 /pages 136-149. In the event, having considered all of the evidence, we were unable to identify any material factor distinguishing one respondent from another.

C. The requests

11. On 23 November 2011 Mrs Havercroft asked University Hospitals Bristol Foundation Trust (UHB) about the terms of Miss Mishcon's appointment. She also asked for copies of all communications between the Trust and Miss Mishcon relevant to the enquiry.
12. Two days later Mrs Havercroft asked UHB for copies of all communications with the Royal College of Pathologists and two other bodies relating to a review of 26 index cases.
13. On the same day she asked for a copy of the terms of reference for a review into specific cases covered by the enquiry. She wanted copies of all communications with the reviewer.
14. On 29 November 2011 she asked for approximately 25 different items of information including action plans, policies, staff communications, protocols and correspondence.
15. On 5 December 2011 Mrs Havercroft asked for copies of all communications between two named doctors, the administrators of the enquiry, the enquiry panel and the Royal College relating to the 26 index cases. She also wanted to receive all information and material received by the panel as well as other information about its workings.
16. On 7 January 2012 Mrs Havercroft asked for a copy of some Royal College advice, a copy of a methodology for coordinating one of the reviews and a copy of instructions to those who were identifying cases to be looked at.

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17. The same day she asked several questions in respect of each of the 26 index cases. She wanted a definition of “serious adverse outcome” and “documentary evidence to explain the logic of” one of the claims in the enquiry report.
18. On 7 January 2012 Mrs Havercroft asked for a copy of some risk assessments.
19. The following day she wrote with reference to a sentence in the report which describes the review of the 26 cases as having been commissioned to confirm one of the doctor’s “instincts”. She asked to be provided with the evidence which supported that doctor’s instincts.
20. The same day she asked for all communications between Ms Mishcon, the administrators of the enquiry and two of the Health Trusts about whether patients and their families should be invited to give evidence.
21. On 28 January 2012 Mrs Havercroft asked for all documents and communications with seven other bodies setting out the “discussion and decision process” which led UBH not to carry out a proper systematic of review of named areas of concern. (All these requests are dealt with in 90.)
22. On 23 April 2012 Mrs Havercroft asked North Bristol NHS Trust for copies of all incident reports concerning expressions of concern from doctors about misdiagnosis giving for each one a summary of the outcome of the investigation and whether the doctors who raised concerns were formally advised of the outcome of the investigation. (120)
23. On 31 July 2012 Mrs Havercroft asked UHB for a copy of its operational policy on breast screening. She also wanted to see the terms of reference for and the report commissioned nearly two years previously on likelihood of harm to the 26 index cases. She wanted to see a list of all information provided to the reviewer. She also wanted to see the terms of reference and the reports of another review commissioned at about the same time (201).

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24. On 22 October 2012 Mrs Havercroft sent a request to UHB. It was in ten parts and concerned a letter received by the UHB Chief executive over four years previously. Some of the parts of the request are themselves multiple e.g. “Where are these actions documented? Please provide copies.” (166)
25. The same day she wrote to the North Bristol NHS Trust asking nine questions about action taken by named members of staff on receipt of a letter four years previously. She also asked for the record of any private discussions of the board about the letter (133).
26. The next day Mrs Havercroft wrote to Bristol NHS Primary Care Trust about a joint health scrutiny meeting held five years previously. She wanted to know what action had been taken or agreed by three named board members in response to a comment which had been made at the meeting (89).
27. The same day Mrs Havercroft sent a 14 part request to North Bristol NHS Trust about a letter and a meeting in 2007. She also wanted copies of various procedures in place in 2007 (134).
28. On 24 October 2012, Mrs Havercroft made a four part request concerning the instruction of a firm of solicitors; two of the requests asked for audit trails. (165)

D. Deliberations

29. In accordance with the Upper Tribunal decision in Dransfield we ensured that in our deliberations we took into account the burden on the public authority, the motive for the request, the value of the request and any harassment or distress caused to staff. The burden placed on the public authorities in almost all of these cases is obvious from the complex and detailed nature of the requests. It must be considered in the context of the many other requests made by Mrs Havercroft.
30. In measuring the burden placed on the public authority it is necessary also to take into account the complexity, in some areas, of considering the extent to which

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exemptions under FOIA should be applied. Sometimes a public authority is under a positive duty to invoke an exemption e.g. if it would be breaking some other law if the information were to be disclosed. In the world of the NHS, patient confidentiality and data protection are very important.

31. It seems right to us to say that, so far as we can tell from the material we have, Mrs Havercroft has in fact received a commendable level of service in the way her requests have been dealt with. See for example the mature tone of the letter at 120/page 106.
32. We specifically asked Mrs Havercroft to tell us about the motives for her requests and she did so in a 33 page document dated 30 December 2013. Paras 1-15 are generic and then motives for the individual requests are set out in a table. The motives themselves are high minded enough taken in isolation e.g.:-

“To establish the extent to which Royal Colleges can be trusted by the public to be objective impartial parties to NHS enquiries”

“To use the information received to inform public judgement on the propriety and professional conduct of the named individuals and determine whether those still in senior NHS positions pose a risk to patient safety and public protection, and if so, pursue this with the appropriate authorities.”
33. All this is commendable enough but in our judgement when it comes to considering the value of the requests there is no real connection between the likely outcome of the request and the furtherance of the high principles said to lie behind it. We are unable to identify any serious good that is likely to be done by answering them, in particular those which seek to rake over old events and re-open methods adopted by the Mishcon enquiry.
34. As to distress caused to staff, this varies of course according to the request. In our judgement, however, Mrs Havercroft cannot be unaware of the worry and difficulty caused to freedom of information officers by some of the requests that are made.

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This is especially true of those made in an adversarial and interrogatory style which assumes wrong doing.

E. Conclusion

35. We weighed all these factors in respect of each of the requests. Obviously, the importance of each factor varied. Some of the requests are larger than others. The tone of some of the requests is more adversarial than others. There is a recurrent theme, however, in all the cases before us; the requests are unlikely to produce information of any value, let alone forward Mrs Havercroft's proclaimed aims; their scope and lack of value is such as to make the NHS authorities concerned to rightly invoke the protection of Section 14 FOIA and to say "enough is enough". In our judgement, all these requests overstep the mark. They no longer represent legitimate campaigning; they are an abuse of the Act.
36. In each case, we agree with the ICO that the requests were vexatious.

NJ Warren

Chamber President

Dated 10 February 2014