



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0205

BETWEEN

WEST LONDON MEDICAL CENTRE

Appellant

and

INFORMATION COMMISSIONER

Respondent

Before

**Brian Kennedy QC
Suzanne Cosgrave
Michael Hake**

Date of Decision: 6 March 2015

DECISION

The Tribunal allows the Appeal in that we find in all the circumstances the request was vexatious.

Introduction:

- [1] The appeal is brought under section 57 of the Freedom of information Act 2000 (" FOIA"). The Tribunal and the parties worked from an Open Bundle (" OB") indexed and paginated and from a smaller Closed Bundle (" CB") also indexed and paginated. The appeal was heard at a hearing on the papers at 31, York Place, Leeds on 29 January 2015.
- [2] The impugned decision under appeal is the Decision Notice (" DN") from the Respondent dated the 9 July 2014: Reference FS50531332.

Background to the Appeal:

- [3] The relevant background to this appeal is summarised briefly in the DN from Paragraphs 1 to 10 and relates to a request for information on 16 January 2014. The relevant detail lies in a long and complicated dispute and exchange between the requester (“the Complainant”) and the Appellant, who is a general medical practitioner in relation to one of his patients (“the Patient”), who is partner to the Complainant. The details are clearly set out in the papers in the OB before the Tribunal and in a confidential annex provided to the Complainant, the Appellant and the Tribunal. The Complainant was never a patient at the Appellants practice.
- [4] In response specifically to the request of 16 January 2014, as set out at paragraph 5 of the DN (*“the requested information”*), the Appellant, provided a response stating that it was refusing to provide the requested information on the basis of section 14(1) FOIA as the requests were considered to be vexatious. As the Appellant is a one man medical practice, no internal review was possible.
- [5] On 17 February 2014 the Complainant referred the matter to the Respondent complaining how the information request had been handled.

The Decision Notice:

- [6] The commissioner’s decision is that the Appellant has incorrectly applied section 14(1) of FOIA to the request (See DN).

The Legislative Framework:

- [7] Section 14(1) FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test. The Respondent properly identifies the criteria to be considered in the issue of vexatious requests and refers to the Dransfield decision wherein the Upper Tribunal, inter-alia commented that vexatious could be defined as *“manifestly unjustified, inappropriate or improper use of formal procedure”* and further refers to instructive identification examples such as the burden imposed by the request, the motive of the requester, harassment or distress to Public Authority employees, while reminding us these were not exhaustive tests. As in any case before these courts and tribunals each case must be decided on its’ merits. Proportionality and justification are important aspects also and again in Dransfield the Upper Tribunal helpfully identifies the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not. We note and have noted in many of these cases the significance of a previous course of dealings, as there is in the facts of this case.
- [8] In the DN, the First Respondent sets out his reasoning for his Decision and examines the case broadly under the heads set out at paragraphs 13 to 19 thereof, specifically; Abusive or aggressive language, Burden to the authority, Personal grudges, Unreasonable persistence, Unfounded accusations, Intransigence, Frequent or overlapping requests and Deliberate intention to cause annoyance.
- [9] This Tribunal considered at length the grounds of appeal, the Response from the Respondent and the evidence in the papers before us. Apart from other issues raised about the validity or otherwise of each of the parts of the requested information, on balance we accept the imposition of a manifestly disproportionate or unjustified disruption on the Appellant has been established. While the Respondent has properly

identified the issues to be determined, the assessment of what is vexations is a subjective one and this Tribunal unanimously disagree with the Respondent's assessment on the facts before us. We are satisfied on balance, that the Complainant, while clearly having a serious purpose and intent for requesting the disputed information in this case, was obsessive, unduly persistent, inappropriate, and disproportionate in all the circumstances and is in our opinion employing an improper use of FOIA. In our view, given the complex and controversial background to the issues, the request on balance is obsessive and lacking in proper motivation or proportionality and in the holistic and broad sense we find the request vexatious.

Reasons:

- [10] We remind ourselves that FOIA promotes disclosure, and transparency and accountability is the desired result. In this case there was, as is evidenced by the papers before us, concern raised in relation to the requested information in this appeal. The Respondents have correctly pointed to the background and the original causes and reasons for queries raised. The Appellant has acknowledged fault and has not disputed that there were grounds for earlier requests for information and refer to a long series of exchanges including over twenty e-mails from 13 February 2013 to 30 September 2013. However some important factors must be taken into consideration when considering the holistic and broad approach to the background to the request inter-alia;

Although the Respondent has recognised that this is a small Practice with one GP and a small staff with one principal administrator both of whom were subject to "attack" by the Complainant and the Patient, the Tribunal are of the view that the Respondent failed to give this significant weight in his decision.

The Complainant was never a Patient in the Medical Practice and although he was a carer for the Patient and was entitled to make inquiries on behalf of the Patient, we are of the view that the nature, extent and manner of his input should have been given more significant weight and added significantly to the oppressive and obsessive background.

The patient was ultimately removed from the list of patients in this Medical Practice on 7 November 2014 which reflects the impact of the request and of the preceding exchanges between the parties which in our view is significant in that it demonstrates the disproportionate consequences of the manner of conduct of the Complainant and the Patient in pursuing an otherwise legitimate request.

In a detailed letter dated 30 April 2014 (at page 134 OB) to the Respondent the Appellant sets out clearly the background to the issues to be considered herein. In the course of the exchanges from the Complainant and the Patient, personalised attacks were made against staff of the Appellant Practice including the Practice administrator who was, we accept intimidated and traumatised. (see for example the e-mail dated 10 October 2013 at page 161 and following exchanges in the OB). In the view of the Tribunal the relevant communications were not merely accusatory, as identified by the Respondent, but were, in our opinion, intimidating and in parts, menacing, aggressive and potentially defamatory (see exchange dated 4 November 2013 at page 182 OB and of 19 October 2013 at pages 212 and 213 OB and following). This Tribunal is not concerned with the merit of any complaints by the Complainant or the Patient as this is a matter for another forum, however the Tribunal has to look at the background in all the circumstances leading to the request in our quest to determine, as best we can, the principal motivation and purpose of the request.

The tone of language used in the exchanges from the Complainant and the Patient was, in our view, abusive, aggressive and menacing and was likely to cause distress and trauma and was, we find, a deliberate attempt to do so. Further we are of the view that it probably had this desired effect.

Attempts by the Appellants to resolve or deal with issues raised were rebutted.

These are demonstrative factors for consideration but not exclusive of a list of factors and concerns raised by the Appellant throughout and in the course of this appeal and while we do not propose to list all of the concerns herein that does not mean that we do not accept their validity or their import. We have considered them all in full and do consider them relevant and of significant weight in support of his grounds of appeal.

For the avoidance of doubt we find the principal purpose of much by way of exchange from the Complainant and the Patient prior to and at the time of the request is menacing and is intended to intimidate.

- [11] Having considered the exchanges, we accept on balance that the request, while posed under a legitimate cause for concern, was in fact designed to cause a disproportionate or unjustified level of disruption, irritation and distress and probably did so.
- [12] It is to be noted that the subject matter of the concerns by the Complainant and the Patient were raised and pursued simultaneously in other forums inter-alia in complaints to the General Medical Council. Obiter, the pursuance of any legitimate investigation, either judicious or otherwise, can and appears to have been considered by the Complainant and the Patient and is not dependent or reliant upon the request herein. They are at liberty to pursue all avenues of complaint available to them and appear to be doing so. Disclosure or discovery will be available to them where appropriate in the pursuance of such complaints or any causes of action that may arise.
- [13] We accept, on the balance of probabilities, on the evidence before us that the Complainant used his request as a means to vent anger and to harass and annoy the public authority in this particular case and in fact did so.
- [14] We noted the Appellants view that there would be a significant burden on them in responding to the subject request. We find it is the case that the burden was significant and unacceptable in all the circumstances where the Appellant is a small Practice and has the interests of many patients to consider.
- [15] Having considered the evidence and the Appellants grounds of appeal, on what were clearly his genuine concerns, we find that the backdrop of other correspondence and complaints only exacerbated his grounds for concern and the frustration felt in all the circumstances of this case. This Tribunal reminds itself that there is duty on Public Authorities to assist members of the public in formulating and processing their requests but on the facts in this case we are of the view that earlier requests and exchanges led to confusion and frustration and a break down in communications such that the Appellant did not seek or deserve. We are of the view that the effect of the request was such as to cause harassment or distress. Further such harassment or such distress can, in our view be placed on the Complainant and the Patient and the request for the reasons set out above.
- [16] We further accept the appellant's assertion that this was "*a Scattergun approach*". There is an element of a "fishing exercise" about the request which can be seen as vindictive and in support of causing disruption and distress.

[17] Taking a holistic view of the facts and history of this particular case, and the guidance given in Dransfield by the Upper Tribunal, on balance we find that the request is an improper use of a formal procedure and is vexatious in the circumstances. For the avoidance of doubt, this finding is without prejudice to the possible engagement of other exemptions, and makes no findings on the validity of the complaints about the Appellant which are completely outside our jurisdiction.

[18] Accordingly we allow the appeal and reverse the finding of the DN under appeal.

Brian Kennedy QC
Tribunal Judge

6 March 2015.