



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

Appeal No: EA/2016/0021

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50599435
Dated: 16 December 2015**

Appellant: Martin Adedeji

Respondent: The Information Commissioner

Heard at: Wigan County Court

Date of Hearing: 12 July 2016

Representation:

Appellant: in person

The Commissioner did not appear

Before

HH Judge Shanks

and

Paul Taylor and Jean Nelson

Date of decision: 21 July 2016

Subject matter:

Freedom of Information Act 2000 (FOIA)

Section 14 (vexatious or repeated requests)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal allows the appeal and issues the following substitute decision notice.

SUBSTITUTE DECISION NOTICE

Public Authority: **Dr P J Southern, Dicconson Group Practice**

Complainant: **Martin Adedeji**

The Substitute Decision

For the reasons set out below the Public Authority was not entitled to refuse the Complainant's request for information made on 1 September 2015 on the grounds that it was vexatious.

Action Required

The Public Authority must by 2 September 2016 disclose to the Complainant the minutes of all practice meetings for the period 2009 to 1 September 2015 redacted to remove any commercially sensitive or personal data.

HH Judge Shanks
21 July 2016

REASONS FOR DECISION

Factual background

1. The Appellant, Mr Adedeji, suffers from a number of disabling mental health issues and experiences intense fears and severe anxiety. He was a patient of the Dicconson Group Practice from August 1987 until 6 September 2011 when he was removed from the practice list. It is his case that his removal from the list was unfair and that the Practice did not take proper steps to find him alternative health provision.
2. On 9 September 2011 Mr Adedeji made a subject access request to the Practice, which he tells us has never been properly dealt with. In March 2012 he brought a claim in the Manchester County Court against the Practice alleging disability discrimination and harassment which was discontinued shortly before the hearing. On 14 March 2014 he made a further subject access request. In July 2014 he complained to the Information Commissioner that the Practice had failed to comply with his subject access requests, a complaint that was rejected by the Commissioner. In November 2014 he made a complaint to the Parliamentary and Health Service Ombudsman that he had been bullied and racially abused during a consultation with a Practice doctor on 3 August 2009. In April 2015 the PHSO rejected his complaint. It also seems from the papers that he has made other subject access requests (his notice of appeal refers to six since August 2010) and FOIA requests (the notice of appeal refers to five since August 2012) and that in 2013 he complained to the Information Commissioner about the Practice's failure to supply information regarding their publication scheme.
3. The Practice's publication scheme dated June 2013 included the following statement:

How we make decisions

(decision making process and records of decisions)

Regular practice meetings take place and all decisions are recorded in minutes. Minutes are available on request, although any commercially sensitive data or data which falls under the Data Protection Act will be excluded.

Hard copy by request from the Practice Manager.

Fee applicable.

In or about January 2015 Mr Adedeji wrote to the Practice as follows:

Please inform me of the fee for a copy of the minutes as listed in your publication scheme – relevant extract copied below [as set out above]

Will you inform me of the fee for each individual year separately please inclusive of postage and packing:

[the years 2009-2010 to 2015-present are listed]

On 24 February 2015 the Practice replied in these terms:

We have discussed your email and feel your contact with us is unreasonable and persistent in nature.

We will not be responding to this or similar requests to this in the future.

4. On 17 March 2015 Mr Adedeji complained to the Information Commissioner about this response. On 13 April 2015 the Practice Manager wrote to him saying that she understood he had been in touch with the Commissioner's Office. She confirmed that the practice did hold information regarding the fees under the publication scheme but would not be responding to the query because it was vexatious in nature and she referred in terms to section 14 of FOIA.

5. Then on 4 June 2015 the Practice Manager wrote to Mr Adedeji an email in the following terms:

Having taken legal advice, I write to confirm that we have decided to change our position. On closer examination, we accept that your request in itself is not vexatious. This is because, while we cannot see what possible

purpose there is in the request, we can provide the information without disproportionate disruption.

I can confirm there is a nominal fee of £5 for the information listed which covers stationary (sic), postage and packing. (Please note, the charges are at the discretion of the practice)...

On 11 June 2015 the Commissioner wrote to Mr Adedeji saying:

[The Practice] has now advised me that it has withdrawn its application of section 14 and has told you it can provide the information you have requested subject to a nominal fee of £5.00 to cover associated costs – stationary, postage and packaging.

This step would appear to satisfy the elements of your complaint ...

If you are content with the step now taken by the authority, you do not need to take any further action and I will assume that you have withdrawn your complaint ...

It seems Mr Adedeji did not withdraw his complaint and the Commissioner produced a Decision Notice addressed to the practice dated 17 August 2015.

The Notice said this:

[1] The complainant has requested information about meeting minutes from the Dicconson Group Practice ... The Practice initially refused to comply with the request saying that it was vexatious under section 14(1) of the FOIA. During the course of the Commissioner's investigation, the Practice released the information.

[2] The Commissioner's decision is that the Practice breached section 1 (right of access), section 10 (time for compliance) and section 17 (refusal of request).

[3] The Practice has now supplied the requested information to the complainant and the Commissioner does not require the Practice to take any further steps.

...

[5] [the January request was set out]

...

[8] The Practice then wrote to the complainant on 4 June, during the Commissioner's investigation. The Practice said it had reconsidered its application of section 14 to his request and was now prepared to release the requested information to him, subject to a nominal fee to cover stationary, postage and packing.

[9] On 7 July, the Practice confirmed to the Commissioner that it had released the requested information to the complainant without charging a fee and the Commissioner invited the complainant to withdraw his complaint. The complainant preferred to progress his complaint to a decision notice.

6. On 1 September 2015 Mr Adedeji wrote to the Practice as follows:

Find enclosed payment for copies of the recorded minutes of your meetings for the years listed below:

[again the years 2009-2010 to 2015-present are listed].

On 24 September 2015 the Practice Manager wrote to him in these terms:

I am unable to comply with your request dated 1 September 2015, as I feel this is so wide it can be considered vexatious. The redaction process would create an undue burden and the information within the minutes would not be considered to be in the public interest.

If you wish to be more specific with regards to your request, I will be willing to review this decision, eg our PPG minutes will be published on our website in the next few weeks as our website is currently being updated. However, I am happy to send you electronic or hard copies of these documents.

If you are unhappy with this decision, you can contact the Information Commissioner's Office ...

(As we understand it, PPG meetings, practice meetings and partners' meetings are all the same thing.)

7. Mr Adedeji's response to this was to complain to the Commissioner again. The Commissioner issued a Decision Notice dated 16 December 2015

upholding the Practice's position that the request dated 1 September 2015 was vexatious. Mr Adedeji now appeals against that Decision Notice.

The Commissioner's Decision Notice

8. In his Decision Notice the Commissioner referred only briefly to the background to and content of his earlier Decision Notice of 17 August 2015 which we have set out above, simply recording the Practice's submission that the January 2015 request was "for information on the fee for releasing ... meeting minutes" and that in June 2015 the practice had provided details about such fees.
9. The Commissioner went on to find that the Practice had interpreted the request of 1 September 2015 as being a request for minutes of all meetings of all types at the Practice in the relevant years (which the Practice say would include staff meetings, managerial meetings and external meetings) and that, in view of Mr Adedeji's failure to respond to the invitation to narrow down the request, that was a reasonable interpretation. The necessary process of redacting all such minutes to extract personal data would take "a considerable amount of time" (subsequently estimated by the Practice Manager as 231 hours): on this argument alone the Commissioner said that he concluded that the request was vexatious.
10. He also went on to find that Mr Adedeji had a personal grudge against the Practice since he had been removed from their list in 2011 and that he was motivated by a desire to distract the Practice and cause it annoyance and that the request for information lacked any serious purpose or value, which further supported the conclusion that the request was vexatious.

The appeal

11. Unsurprisingly Mr Adedeji in his written and oral submissions has taken exception to the Commissioner's findings about his motives and purpose in

making the request. He explained to us in the course of the hearing that his removal from the list had been unfair and badly handled and that his subject access requests had not been complied with (not least because, he said, he had been provided with no record of the decision making process in relation to his removal from the list). He emphasised that the minutes he was seeking were only those promised in the publication scheme and he told us that he wanted to see what they disclosed in relation to the Practice's approach to equality issues and access to healthcare for all, matters of particular concern to him given his disabling mental health issues.

12. We do not think that it is necessary on this appeal to reach conclusions as to Mr Adedeji's motives and purpose in making his request because we consider that, in the light of the background we have set out above at paragraphs 3 to 6 above, the Commissioner was wrong to uphold the Practice's reliance on section 14 in any event. Our reasons are as follows.

13. In the letter of 4 June 2015 the Practice stated that, having taken advice, they had concluded that the request made in January was not vexatious because the "information" requested could be provided without disproportionate disruption. We just do not see how it can now properly be maintained that the "information" referred to in that letter was the level of the fee required to provide the minutes referred to in the publication scheme, rather than the minutes themselves. It seems clear from the letter of 11 June 2015 and the Decision Notice of 17 August 2015 that the Commissioner understood at the time that the Practice was willing to provide the minutes themselves, and indeed he appears also to have been given the impression that they had already been released to Mr Adedeji without any fee being charged (in fairness to the Practice we should say that we have not seen any record of what was actually said to the case worker on 7 July 2015).

14. Nor, in the light of the preceding correspondence, do we see how the request of 1 September 2015 could properly have been interpreted as anything other

than a request for the minutes of the practice meetings referred to in the publication scheme, minutes which, as the Practice Manager said in her reply of 24 September 2015, were shortly to be published on the website and which she said she would happily send Mr Adedeji in electronic or hard copy. It is unfortunate that Mr Adedeji did not respond to the invitation to be more specific in his request but in the light of the background we have some sympathy with him when he tells us that he simply no longer had sufficient trust in the Practice to engage in further dialogue.

15. In any event, we are clear that the Practice had on 4 June 2015 already conceded that the request which was in due course made on 1 September 2015 was not vexatious and, further, we are clear that the information could indeed have been supplied with minimal disruption. In those circumstances it was in our view simply not open to the Practice to rely on section 14 in response to the request of 1 September 2015 and the Commissioner should have so found.

Conclusion

16. We therefore allow Mr Adedeji's appeal and issue the substitute decision notice set out above. Given the time of year, we will allow the Practice six working weeks to supply the material.

17. This is a unanimous decision.

HH Judge Shanks

21 July 2016