



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0007

Before
Judge Stephen Cragg Q.C.

Tribunal Members
John Randall
Michael Jones

Between

Frances Gaskin

Appellant

-and-

The Information Commissioner

Respondent

Attendances:

For the Appellant: In person

For the Respondent: Did not appear

Decision Date: 9 July 2018

Promulgation Date: 13 July 2018

DECISION AND REASONS

BACKGROUND

The request

1. The Appellant made a request for information on 15 March 2017 to the Norfolk and Suffolk NHS Foundation Trust (the Trust) in the following terms (with apparent typographical errors maintained):-

Please act via FOI to provide legal case facts going back over five years, where persons, Anonymised have brought what claims for what reasons, when against NSFT? And indicate at what stage those claims were settled, in whose favour NSFT or public person e.g. out of court, by court Order.

If any such information is available on the public web you can I the interim send such a, direct link.

2. The Trust decided that it would not comply with this request, and wrote to the Appellant on 19 April 2017, stating that they considered her request as 'vexatious' pursuant to section 14(1) FOIA. The Appellant requested an internal review, and on 27 June the Trust upheld its decision.
3. On 9 May 2017, the Appellant re-submitted a request that she says was first submitted to the Trust on 3 March 2016 in the following terms (again with apparent typographical errors preserved) :-

On page 5 of the attached document dated 2013 the Trust states that their data act offences have decreased.

Please avail within your 18 hours allocated time for FOI, from 2006 the data offences records year by year, by which at 2013 these will show 'a reduction', 7 years later.

Add please the figures from 2013 to date.

Add please some reasonable account for "having no record of the ICO Assessment in my case" that came subsequent to [Named Individual] finding in my favour two general complaints from 2006-2009.

Have you FOI Accessed the "file that [Named Individual] placed in a cupboard to which he has a key via an office near the top of the main entrance stairway "for such FOI copy ? viz it is FOI because nsft HAS been keeping records of data act offences (to this general complaint file I have a right of access I again note, but NFST currently denies to me)

You have twenty working days to comply.

4. The Trust has confirmed that it overlooked this request initially and did not reply. During the Commissioner's investigation the Trust has said that it has considered this request as vexatious also.

The Decision Notice

5. As recorded in the Decision Notice of 5 December 2017, the Commissioner was of the view that the Trust's submissions as to why section 14 FOIA applied were brief, but indicated that the requests put an unjustified burden on it, that the requests were futile and demonstrated unreasonable persistence and a scattergun approach. The Trust explained that it had been in touch with the Appellant for many years, with her correspondence taking up a lot of staff time. There had been a court case and a pending civil restraining order application. It was difficult to decipher the requests and whether they were FOIA requests or not. All communications from the Appellant were now being dealt with by the Trust's legal department which had led to a decrease in communications.
6. In a further submission dated 22 November 2017 the Trust says that it has received nine FOIA requests since 2014, and there has been significant contact with staff by email. In a further conversation with the Trust it was accepted that the volume of FOIA requests 'is not especially high' but should be seen in the context of over 1000 pages of emails with sixteen members of staff since 2010. The trust believed that the context of this level of contact appears to stem from a situation in 2008 when the Appellant was concerned that the Trust had wrongly disclosed her personal data to other agencies, and the Appellant's unwillingness to accept the Trust's assurance that it was acting in line with its usual practices and policies. Another such incident occurred in 2013 which led to an increase in correspondence.
7. The Trust said that as well as FOIA complaints, the Appellant had brought complaints to the ombudsman, the Courts and NHS Litigation, none of which had been upheld.
8. Taking all these factors into account the Commissioner agreed with the Trust that the requests in this case were vexatious.

The appeal

9. The Appellant's appeal is dated 6 January 2018. It is in one long paragraph of upper case writing and, in places, difficult to comprehend. The Commissioner's Response has sought to summarise the points the Appellant has made, and the Appellant explained some of her points to us at the hearing as well.

10. The Appellant makes a number of points to the effect that the Commissioner has been biased in favour of the Trust in supporting the finding of vexatiousness, and has been intent on fast-tracking the Appellant's files.
11. She argues that there was a year's gap between the initial submission of the first request in 2016 and the request made in March 2017 and therefore her requests cannot be described as vexatious.
12. She says that the Commissioner has relied on 'inaccuracy' and 'personal and inaccurate highly sensitive personal data' in coming to her decision, but the Appellant has not enlarged on what she means by this. She says that 'de facto there is no evidence of vexatiousness at all'.
13. In the hearing, the Appellant emphasised the following points:-
 - (a) She says she had made only three requests under FOIA (and not nine as claimed), and she denied that the email correspondence had been as extensive as described by the Trust.
 - (b) Much of the correspondence with the Trust had not been about FOIA issues.
 - (c) The legal case she was involved in with the Trust was not germane to the FOIA requests.
 - (d) Previous FOIA requests had been upheld.
 - (e) Her MP had written to the Trust twice about the issues she raised.
 - (f) There had been long periods when she had had no contact with the Trust.

DISCUSSION

14. Section 14(1) FOIA states that "(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious". Vexatiousness is not defined in section 14, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.

15. The Commissioner's guidance on section 14 FOIA states that it is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

16. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) when it defined the purpose of section 14 as follows:

'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph 10).

17. Also in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. As the Upper Tribunal observed:

'There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA'.

18. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed that:-

'...the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.' (Para 68)

19. The Commissioner's guidance also contains a list of indicators which we think are helpful in considering 'all the relevant circumstances' in this case. The indicators we have considered are as follows:-

Burden on the authority

The effort required to meet the request will be so grossly Oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

Unreasonable persistence

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public

authority, or otherwise subjected to some form of independent scrutiny.

Scattergun approach

The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

Futile requests

The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.

20. It is clear that the Appellant has had extensive dealings with the Trust over the years since she formed the view that the Trust had wrongly communicated information about her to another agency. It seems clear to us that her determination to pursue this issue is the motivation behind her frequent correspondence and requests (whether these have formed FOIA requests or not).

21. We are not in a position to decide whether Ms Gaskin has made three FOIA requests between 2013 and 2017 or whether it is nine, as the Trust has said. Whichever figure is correct we agree with the Commissioner that it does not amount to an excessive number of requests in that period.

22. What is of greater concern is the wider context of the Appellant's contacts with the Trust. We have no reason to believe that the summary of the contact between

the Appellant and the Trust as summarised in the email to the Commissioner of 28 November 2017 is incorrect. The email refers to 296 emails from the Appellant over the 2013-2017 period and 14 difficult phone calls. Reference is also made to a Notice of Hearing document which refers to a civil proceedings brought by the Claimant against the Trust which appears to refer to an incident in 2013 when she states that a mental health nurse carried out checks against her personal information after she had been detained by the police.

23. There appears to be another claim (or claims) brought against a large number of people including employees of the trust alleging breaches of the DPA which were struck out and a civil restraint order continued by the High Court in 2013. Complaints have been investigated by the Health Service Ombudsman and NHS Litigation, none of which had been upheld
24. The most recent requests need to be seen in the context of this activity by the Appellant over a number of years. The requests relate to legal actions brought against the Trust over a period of five years, figures relating to DPA matters and some requests which appear to be about the Appellant's own files which are hard to understand.
25. It seems to us that these requests are a continuation of the activities of the Appellant over the past few years, still driven by the fact that she believes she has been victim of wrongful disclosure of her personal information. Accordingly we find that the requests are rightly described as vexatious because:-
 - (a) The requests continue and exacerbate the strain on the time and resources of the Trust already caused by the Appellant.
 - (b) The requests appear to be aimed at re-opening closed issues relating to DPA disclosure and court cases.
 - (c) Her interactions with the Trust overlap at times and represent a scattergun approach relating to court litigation and DPA issues and the requests represent a continuation of this approach.
 - (d) Her activities have mushroomed from attempts of the Trust's employees to assist her when she has been in police custody.
 - (e) The underlying issues about which she is concerned have been resolved.

26. In relation to the grounds of appeal, there is no evidence that the Commissioner has been biased, or has failed to investigate properly or has acted in any way improperly. In the light of the above discussion, we reject the Appellant's argument that her FOIA requests should be viewed separately from the general context of her contact with the trust: it is necessary for us to take all the circumstances into account. We also reject the argument that the Commissioner has decided that the Appellant is vexatious (rather than the requests). The Commissioner has rightly decided that the requests are vexatious in the context of the background to the case. We agree with the Commissioner that it is not possible to understand what the Appellant means in her notice of appeal when she says that the Commissioner has relied on 'personal and inaccurate highly sensitive data' and find that this allegation does not provide a basis for allowing an appeal on the question of vexatiousness.

CONCLUSION

27. For the reasons set out above we are satisfied that the Appellant's requests were vexatious and we dismiss the appeal.

28. This decision is unanimous.

Signed *Stephen Cragg QC*

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 9 July 2018.

(Case considered by Panel on 29 May 2018).