

21 November 2022

7 and 8 Wellington Place  
Leeds  
West Yorkshire  
LS1 4AP

Our refs: NIC-686520-T5Q0X and NIC-686548-Q3F3L

Dear Sir/Madam,

**Re: Internal review for Information Request – Freedom of Information Act (FOIA) 2000**

Thank you for your emails dated 28 October 2022, in which you have made a request for an internal review of NHS Digital's response to your Freedom of Information Act 2000 (FOIA) information requests references NIC-682921-Y1W0D and NIC-682949-X3W8G)

**Request History**

Your original requests were dated 6 and 7 October 2022, and read:

*"Please can you clarify a few matters regarding patient's rights to know who has accessed their medical data on the PDS Service.*

*Please can you clarify whether or not the following information is accurate in regards to patient's that submit a DSAR to NHS Digital for their own audit data.*

- 1) If a patient submits a DSAR to NHS Digital for their own audit data, are the only names that should be redacted from the audit log the receptionists?*
- 2) If NHS Digital do redact any health professionals name that has accessed the medical records, do they need to provide the patient with a valid reason for each name that is redacted on each occasion within the patient's audit log?*
- 3) Please can you confirm whether or not NHS Digital should also provide the patient with the health professional's reasons for accessing the medical records?*
- 4) If a patient requests for an independent review of their DSAR request by a Caldicott Guardian due to missing information from their DSAR, do NHS Digital have a duty to honour the patient's request?*

*As you are aware, NHS Digital also has it's own Counter fraud team known as the NHS Digital Counter Fraud team. I believe they also investigate complaints in regards to bribery and corruption.*

*I believe that patient's can contact the team at the following address:*  
[nhsd.fraudteam@nhs.net](mailto:nhsd.fraudteam@nhs.net)

- 5) Please can you confirm whether or not the NHSD Counter fraud team work independently from the team that handle patient's DSAR requests?"*

And

- "1) Who are the Executive Agency Programme - NATIONAL PROGRAMME FOR IT (X09001)?"*
- 2) What do they do?"*
- 3) Why would they access somebody's records on the PDS service?"*

NHS Digital's response (**our response**) dated 28 October 2022 explained that we were refusing your requests under section 14(1) of the FOIA, on the grounds that they were vexatious.

### **Scope of Internal Review**

My understanding of your request for internal review (**Internal Review Request**) is that you do not agree that your requests are vexatious. In your emails seeking a review, you wrote:

*"I feel like your assessment of the situation is inaccurate, as the whole reason I have had to submit similar request is due to the information not being easily accessible to the general public and also feeling like I have to reword requests. Therefore, I would like to request an internal review."*

*"I just want to say that none of my requests have been ill founded or vexatious and my experiences with NHS Digital in regards to transparency have always been reasonable."*

*Therefore, I believe it is only reasonable to also be transparent with you and share my reason for my last requests regarding the audit data."*

*My FOI request was not to undermine your internal review of any personal matters. However, the fact of the matter is, I have evidence of the ICO saying one thing and also NHS Digital saying the opposite."*

*I also have a different set of audit data from a different NHS service that completely contradicts what NHS Digital have previously said, hence my reason for seeking clarification and submitting a FOI request."*

*Clearly the 2 reasons above, justify seeking clarification within a freedom of information request to someone from NHS Digital who was not involved in any personal matters."*

*Furthermore, NHS Digital are obliged to honour the seven principles of public life, which includes openness, hence my reason for believing you would have no problem allowing someone impartial from NHS Digital to answer the FOI request."*

I am a NHS Digital's Freedom of Information Lead, and I have conducted a review of the handling of your request in accordance with our duties under the FOIA. I have made a fresh decision based on all the available evidence that was relevant at the date of your request.

This letter sets out my findings and decision in respect of my review.

### Internal Review Decision

It is my decision that it was appropriate to refuse your requests under section 14(1).

I note your comments regarding the intentions behind your requests, and appreciate that you are seeking clarification with regard to the information which you believe should (or should not) have been released to you thusfar. It is for precisely this reason that I find it was appropriate to refuse your requests under section 14(1).

Section 14(1) sets out that organisations are not obliged to respond to FOI requests which are vexatious. The term 'vexatious' is not defined within the legislation, but the Information Commissioner's Office (ICO) offer [guidance](#)<sup>1</sup> on what may constitute a vexatious request.

In this case, I consider that FOI is not the appropriate route for your queries. As was outlined in our original FOI response, you have already submitted an Internal Review into the Data Subject Access Request (DSAR) Response you were provided. This is ongoing with an estimated response date of 7 December 2022. The DSAR Internal Review process is the appropriate channel for your concerns regarding the information which was or was not disclosed to you under the Data Protection Act.

I have also re-considered the pattern and history of your requests. As set out in our FOI response, you submitted a total of eight FOI requests to NHS Digital between 17 August 2022 and 7 October 2022, all of which relate in some way to DSAR case reference NIC-679337-S0D0N. This equates to more than one per week. While I note and appreciate your position that submitting requests has been necessary to gain clarity on the situation, I also take into account that requests were frequently submitted in quick succession, without waiting for responses to those which were already active, or directly in response to FOI replies you had been provided with.

It is unlikely that providing a response to the two requests which are the subject of this review would have served to resolve the matter. It is far more likely that additional requests would have been submitted, further increasing the burden on NHS Digital, and further complicating the matter of your active DSAR Internal Review.

I therefore conclude that NHS Digital's original section 14(1) refusal was appropriate.

I hope this information is helpful. However, if you remain dissatisfied you are entitled to raise your concerns with the Information Commissioner's Office (ICO). We have set out the ICO's contact information below.

Post: Information Commissioner's Office  
Wycliffe House Water Lane  
Wilmslow

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

Email: Cheshire SK9 5AF  
[icocasework@ico.org.uk](mailto:icocasework@ico.org.uk)

Yours sincerely,

**Chloe Whiles**  
Freedom of Information Lead

NHS Digital