

Decision 5 - 00310
Cayman Islands National Insurance Company
(CINICO)

Jennifer Dilbert, MBE, JP
Information Commissioner for the Cayman Islands
6 August 2010

Summary:

An Applicant was refused access by CINICO to a list of all approved in-network providers for overseas referrals.

The Information Commissioner did not find that the request was vexatious as per section 9(a) of the *Freedom of Information Law, 2007*. However, the Commissioner did find that section 9(c) applied to the request as it would unreasonably divert the resources of the Public Authority. CINICO is not required to comply with the request.

Statutes Considered:

Freedom of Information Law, 2007, sections 9(a) and 9(c).
Freedom of Information (General) Regulations, 2008, Regulation 10(1) and 10(3)(b)

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A. INTRODUCTION

- [1] On 1 February 2010, the Applicant made the following request to CINICO: "I understand that for overseas referrals there exists a list of approved in-network providers. Can you please provide that list of all in-network providers".
- [2] CINICO refused access to the records citing sections 9(a) and 9(c) of the *Freedom of Information Law, 2007* ("FOI Law"). An internal review of the request was conducted by the Chief Officer of CINICO, who on 30 March 2010 upheld the decision of the Information Manager to withhold the responsive record. The Applicant appealed the matter to my office on 6 April 2010, and as per the procedures of the Information Commissioner's Office ("ICO") an attempt was made to resolve the matter through mediation. The issues were not resolved, and the matter proceeded to a formal Hearing before me.

B. PROCEDURAL MATTERS

- [3] While parties to a Hearing are not required to retain legal council, it is noteworthy that this is the first formal Hearing to come before me where the Public Authority has not been represented by the Cayman Islands Legal Department.
- [4] There were several procedural hurdles during this Hearing. In the first instance, the Applicant did not provide a submission. On 7 July 2010, once the noon deadline for Initial Submissions had passed, the Registrar of Hearings contacted the Applicant to inquire if they intended to set out their position in this matter. While a formal submission was not provided, the Applicant's response to this correspondence was accepted in lieu.
- [5] On 11 July 2010, the Applicant again wrote to the Registrar, without, however, making it clear whether this communication was intended as a formal reply submission. Confirmation from the Applicant was sought, but as no response was provided, the Registrar again accepted this correspondence as a submission and treated it as such.
- [6] In turn, the Public Authority did not provide a reply submission, and was contacted by the Registrar to confirm that none was forthcoming.
- [7] Before the Close of Hearing, it came to my attention that the policy document which indicates the existence of the list of providers sought by the Applicant, and which was referred to by both the Applicant and the Public Authority, had not been included in submissions. While CINICO did include one page from the document, in order for me to ascertain the full context and circumstances of this request it was imperative that the entire policy be provided for review. The document was therefore requested from CINICO.
- [8] In the interest of fairness, clarity and expediency, it is of the utmost importance that the established hearing procedures are adhered to by all parties, in terms of timelines, formats and methods of submissions. It is vital that all parties understand the process, apply it correctly, and respect my statutory powers to inspect documentation and investigate a matter before me. It is with significant concern, therefore, that I note the difficulties met by the Registrar in this regard.

C. ISSUES UNDER REVIEW IN THIS HEARING

- [9] The issues to be decided in this Hearing are:
1. **Section 9(a)** – Is the Public Authority not required to comply with the request because the request is vexatious?
 2. **Section 9(c)** – Is the Public Authority not required to comply with the request because compliance with the request would unreasonably divert its resources?

D. CAYMAN ISLANDS NATIONAL INSURANCE COMPANY (CINICO)

- [10] CINICO is a government-owned insurance company formed to provide health insurance coverage to civil servants (employees and pensioners) and certain other residents of the Cayman Islands. In providing overseas coverage, CINICO has contracted with a third party administrator to manage all medical services for CINICO members outside the Cayman Islands. This administrator has world wide provider networks consisting of thousands of physicians and medical facilities.
- [11] For planned overseas medical services, CINICO members must receive a referral from the Cayman Islands Health Services Authority, who then contacts the administrator who determines the best provider to satisfy the medical need. In an emergency overseas, special provisions apply to allow the member to receive immediate medical care, and to contact the administrator's hotline within 48 hours.

E. CONSIDERATION OF ISSUES UNDER REVIEW

1. IS THE RECORD REQUESTED SUBJECT TO SECTION 9(a) OF THE FOI LAW?

- [12] CINICO has denied access to the requested record on the grounds that it is subject to section 9(a) of the FOI Law. This section states:
9. A public authority is not required to comply with a request where-
- (a) the request is vexatious;

1(a) The position of CINICO

- [13] In its submission, the Public Authority demonstrates that it advised the Applicant that there was no single document that lists all the providers, and attempted to help the Applicant receive a more specific list by trying to ascertain the country, region, and type of medical facility and doctor that was required by the Applicant. The Public Authority explained to the Applicant how to access overseas medical care. It submits that the Applicant did not attempt to work with the Information Manager in clarifying the information requested, by:

(1) not acknowledging my points of the breath [sic] of the search and work required in producing a document for an all inclusive list (2) invoking their right to the I.C.O. without recognizing by law that I have a right to narrow the scope of the request (3) no acknowledgement of my recommendations to pursue if they had a medical concern which would provide a relevant provider list and keep the matter private.

[14] CINICO further contends that:

at all times it was stated that I wanted to comply with the request, but the applicant refused to acknowledge this or attempt to work with me in fulfilling their request. This demonstrates a conflict approach which seems to be more than just wanting the answer to the question the applicant submitted.

[15] CINICO also notes that this Applicant has a history of confrontation in requesting documents from CINICO.

1(b) The Applicant's position

[15] As set out under PROCEDURAL MATTERS above, in the initial submission in support of the appeal the Applicant states that:

My request was for information that CINICO has agreed in its signed and approved planning document that they will provide this information on its website. I am not requesting anything outside the norm nor anything that CINICO has not already agreed, in writing, to provide.

[16] In the subsequent reply submission the applicant contends that:

CINICO's standard policy document does not make it clear that they will only provide the information in a medical emergency nor is that "understood" to be the case. In fact I re-iterate again that the signed policy document I saw stated that all information would be posted on their website. How is that implied [sic] that it is only provided in medical emergencies or on an as needed basis. It states it will be published to the website and I believe in all fairness they should be doing what they state they will be doing in their own policy document.

1(c) Discussion and finding – Is the record requested subject to section 9(a) of the FOI Law?

[17] Under section 9(a) a public authority is not required to comply with a request where the request is vexatious. This exclusion is not subject to a public interest test. Section 9 is essentially a remedial tool the public authorities possess to curb abuse of the right of access. The term "vexatious" is not defined in the FOI Law or Regulations, and is therefore intended to have its ordinary meaning, such as "instituted without sufficient grounds and serving only to cause annoyance...¹". It is premised on the assumption that a person who wields their statutory rights in a vexatious manner, unnecessarily burdens a public authority and threatens or diminishes the ability of others to exercise their statutory access rights. Vexatious requests also threaten to bring the FOI Law into disrepute.

¹ <<http://www.dictionary.com>>

[18] Guidance from the UK Information Commissioner's Office² offers that in identifying a vexatious request the following questions should be considered, taking into account the context and history of the request:

(i) Can the request fairly be seen as obsessive?

I see no evidence to suggest that this particular request is obsessive. I have not been advised of further requests from this Applicant that, for example, overlap with this request or are similar to this request.

(ii) Is the request harassing the authority or causing distress to staff?

While the Public Authority does indicate that there is a history of confrontation in requesting documents by the Applicant, no direct evidence has been supplied to support a claim for any significant distress in this case other than a general lack of cooperation.

(iii) Would complying with the request impose a significant burden?

With respect to whether complying with the request would impose a significant burden, the issue of unreasonable diversion of resources of the Public Authority is best addressed under section 9(c) of the FOI Law which is discussed later below.

(iv) Is the request designed to cause disruption or annoyance?

While I can see how this request might cause disruption or annoyance, I am not convinced that it was designed to do so. I have not been shown that any such annoyance or disruption is of such a serious nature that the request should be considered vexatious. The Applicant did decline to work cooperatively with the Public Authority, but in all fairness, was requesting something that the applicant was led to believe was available to the public in a CINICO policy document.

(v) Does the request lack any serious purpose or value?

Finally, I question whether the request has any serious purpose or value. While pursuant to section 6(3) of the FOI Law, an applicant is not required to give any reason for requesting access to a record, I cannot fathom any purpose or value to one person obtaining a list of every single service provider contracted by the CINICO administrator in every country of the world. CINICO did offer to provide details for a specific country or region, and a specific type of medical facility provider, but the Applicant declined to narrow the scope of the request. However, this apparent lack of serious purpose or value in itself, in my opinion, does not render the request automatically vexatious, particularly in the absence of the other relevant factors examined above.

² Information Commissioner's Office (UK), *Freedom of Information Act: vexatious or repeated requests*, version 4, 3 December 2008, http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf (accessed 4 August 2010)

- [19] The UK Information Commissioner's Office further advises that to judge a request vexatious, a relatively strong argument should be made under more than one of the questions.
- [20] With respect to context and history, CINICO states that this Applicant has a history of confrontation in requesting documents. It does not however provide me with evidence that the course of this particular request was vexatious. It must be remembered that the Law requires that it is the request, and not the requestor, that is vexatious.
- [21] Considering all the above, and also that the Applicant has a reasonable expectation that the information was promised on the CINICO website and should be readily available, I do not find that the request can be deemed to be vexatious.
- [22] **I therefore find that the request for the record is not subject to section 9(a) of the FOI Law.**

2. IS THE RECORD REQUESTED SUBJECT TO SECTION 9(c) OF THE FOI LAW?

- [23] CINICO is also refusing access to the responsive record on the grounds that compliance with the request would unreasonably divert its resources.

Section 9(c) states:

9. A public authority is not required to comply with a request where-
...
(c) compliance with the request would unreasonably divert its resources;

- [24] Before a public authority can apply this section of the Law, Regulation 10 of the FOI Regulations³ sets out what is to be considered and done by the Information Manager of the public authority.

- [25] The Regulations state:

- 10(1) Before a public authority makes a decision to refuse access under section 9 (c) of the Law (on the basis that the request would unreasonably divert its resources) the information manager shall send written communication to the applicant-
- (a) explaining how the request is likely to unreasonably divert resources; and
- (b) inviting consultation with a view to narrowing the request.

- [26] The Regulations further state:

- 10(3)(b) the types of factors which shall be considered to determine whether the diversion of resources would be unreasonable include-

³ The Freedom of Information (General) Regulations, 2008

- (i) the nature and size of the public authority;
- (ii) the number, type and volume of records falling within the request; and
- (iii) the work time involved in fully processing the request.

2(a) The position of CINICO

- [27] The Public Authority advises that they have the ability, when requested, to provide names and locations of providers in advance if a member will be traveling and they let CINICO know where they will be. However, there is no existing document that lists all provider networks, and to create an all inclusive list would involve several companies and a lot of time and expense.
- [28] CINICO has provided me with copies of correspondence with the third party administrator in which the administrator gives details of what resources would be required to create a single listing of all providers, locations and facilities. They estimate that such a project would cost about US \$30,000 and would result in a document in excess of 100,000 pages.

2(b) The Applicant's position

- [29] The Applicant made no further submissions other than those quoted in 1(b) above. This in no way diminishes the Applicant's case, as under section 43(2) of the FOI Law, in any appeal the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under the Law.

2(c) Discussion and finding – Is the request subject to section 9(c) of the FOI Law?

- [30] It is clear to me that the Information Manager of the Public Authority complied with the Regulations and attempted to explain to the Applicant the breadth of the request, and invited the Applicant to narrow the request. It is also clear that the number, type and volume of records falling within the request are very large, and the work time involved in fully processing the request would be great. I am somewhat skeptical of the cost estimate of \$30,000 that was quoted to produce the list of in-network providers. However, I am of the opinion that if CINICO was even required to pay half the quoted amount, this would only serve to create a document that would soon be outdated and hold little or no value to either one applicant or the general public. The production of this document would be an unreasonable diversion of resources of CINICO.
- [31] **I find that section 9(c) of the FOI Law applies to the request and the Public Authority is not required to comply with the request.**

F. DISCUSSION

- [32] The Applicant, in the original request and in subsequent correspondence, alluded to several facts that merit some consideration. First, the Applicant stated that "I understand

that for overseas referrals there exists a list of approved in-network providers.” I have not been advised by either party where this understanding originated.

- [33] Second, the Applicant states that “your own standard policy document states that this information should be available on your website and it is not”. I have perused the “Plan Document and Summary Plan Description for Cayman Islands Government Group Plan 3010001 Civil Servants, Pensioners and Government Entities, Restated Effective 01 December 2006” as well as CINICO’s website to ascertain what documentation is promised to members. On page 14 of this document, under SCHEDULE OF BENEFITS, the plan states that “Additional information about this option as well as a list of Network Providers, will be given to Plan Participants, at no cost, and updated as needed.” In addition, on page 27, under CASE MANAGEMENT SYSTEMS, the plan directs readers to “Please see www.cinico.ky to locate an in-network facility”.
- [34] I would therefore urge CINICO to look carefully at its published Plan Documents and website to ensure that no potentially misleading information is given, and that it is clear to Plan Participants what documents can be supplied.

G. FINDINGS AND DECISION

Under section 43(1) of the FOI Law, I make the following findings and decision:

Findings:

The Applicant’s request for a list of all in-network providers is not subject to section 9(a) of the FOI law as it is not a vexatious request.

The Applicant’s request for a list of all in-network providers is subject to section 9(c) of the FOI law as compliance with the request would unreasonably divert the resources of CINICO.

Decision:

I uphold the decision of CINICO to refuse to comply with the request of the Applicant under section 9(c) of the FOI Law, and do not require CINICO to provide the Applicant with a copy of the responsive record requested.

As per section 43(3) of the FOI Law I reject the appeal of the Applicant. The Applicant may, within 45 days of the date of this Decision, appeal to the Grand Court by way of a judicial review of this decision.



Jennifer Dilbert
Information Commissioner
6 August 2010