

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 June 2007

Public Authority: Central & Eastern Cheshire Primary Care Trust
Address: Barony Road
Nantwich
Cheshire
CW5 5QU

Summary

The complainant requested a list of the delegates who had attended an event organised by the Eastern Cheshire NHS Primary Care Trust (the "PCT") as part of a programme of public consultation called the Future Health Care Project, together with their contact details and their "status information". The PCT provided a list of the job titles of the delegates and the organisations that they represented. However, it refused to provide the names and contact details of the delegates, and cited the exemption at section 40 of the Freedom of Information Act 2000 (the "FOIA"), stating it believed that the disclosure would be a breach of the Data Protection Act 1998 (the "DPA"). During the course of the Commissioner's investigation the PCT informed him that it no longer sought to rely on an exemption to withhold the majority of the information – it now sought only to withhold the contact details, where the delegates had provided personal contact details, i.e. residential addresses, personal email accounts. After investigating the matter the Commissioner decided that the PCT had breached the requirements of section 1, in so far as it had cited an exemption which it had subsequently partially withdrawn. The Commissioner also concluded that the public authority had breached the requirements of section 17 of the FOIA by failing to issue an adequate refusal notice. He did, however, uphold the PCT's decision to withhold the personal contact details under section 40 of the FOIA. Central and Eastern Cheshire NHS Primary Care Trust has now taken over the Eastern Cheshire NHS Primary Care Trust's responsibilities, and therefore this Notice is addressed to it.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. This Notice sets out his decision.

The Request

2. On 20 October 2005 the complainant emailed the PCT and requested the following:

"Please provide list of delegates with contact details & status info and minutes recorded of the ECHT Stakeholder meeting held 21 Sep 2005."

3. The PCT provided the complainant with a copy of the delegates list in an email dated 31 October 2005, showing the positions and organisations of the delegates, but with the names of the delegates redacted. The email went on to state that the PCT was planning to publish the "the days output" as soon as it had been reviewed and finalised.

4. The complainant emailed the PCT again on 7 November 2005 and asked for an explanation as to why the names of the delegates had been redacted.

5. The PCT responded on 11 November 2005 and informed the complainant that it had redacted the names of the delegates because,

"GPs, Dentists etc are independent contractors and as a PCT we do not have the obligation to publicise their details, to do so would breach their confidentiality under the DPA. Outside of the accepted PCT staff who are not exempt we would be in breach of confidentiality under the DPA 1998."

It cited section 40 of the FOIA, although it did not specify which part of section 40 it was relying upon. The PCT did not inform the complainant of his right to an internal review, nor his right to complain to the Commissioner. The Commissioner has formed the view that this letter forms the PCT's refusal notice for the purposes of section 17 of FOIA.

6. On 13 November 2005 the complainant emailed the PCT and requested an internal review of the decision to withhold the names of the delegates. He stated that as the delegates attended the event in their work, public or professional capacity, and as most of the delegates names could be identified from the information the PCT had previously disclosed to him, he believed the information should be provided to him.
7. The PCT responded to the complainant in an email dated 11 January 2006. It stated that it upheld the decision to withhold the names of the delegates under

section 40, as the disclosure of this information, “would breach the individual’s confidentiality under the Act.” The email went on to state that all the other information which the complainant had requested was exempt under section 36, as the project was still in a consultation phase. The PCT still did not inform the complainant of his right to complain to the Commissioner.

The Investigation

Scope of the case

8. On 16 January 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the refusal by the PCT to provide a list of the names of the delegates who had attended the meeting. The Commissioner has focused his investigation on this aspect of the case. Consequently the Commissioner has only considered the application of section 40(2) in respect of the withheld information, as the application of section 36 was applied only in relation to the request for minutes which did not form part of complaint.
9. Although the complainant did not raise the point, the Commissioner has also considered whether the PCT breached section 17 of the FOIA when issuing the refusal notice by failing to provide details of its internal review procedures.

Chronology

10. The Commissioner contacted the PCT on 5 March 2007 and asked for a copy of the withheld information. He also asked for further details of the PCT’s reasoning in claiming the section 40 exemption, and for clarification as to which part of section 40 it was seeking to rely upon.
11. The PCT responded in a letter dated 27 March 2007, and provided a copy of the withheld information. The PCT informed the Commissioner that it now believed that section 40 had been misapplied to some of the information in question. Specifically it stated that it was now prepared to release the names of the delegates, together with their job titles/details of the organisations they represented, and their contact details, but only where they had provided business contact details. It went on to state that as some of the delegates had provided personal contact details, i.e. home addresses and personal email account details, it still sought to withhold these contact details under section 40 of the FOIA, as it believed that the release of this information would be in breach of the first principle of the Data Protection Act 1998 (DPA).
12. For ease of reference the Commissioner will refer to this withheld information as the ‘personal contact details’ throughout the rest of this Notice.
13. After further correspondence the PCT confirmed to the Commissioner, in a letter dated 10 April 2007, that it was now willing to provide the complainant with a copy

of the information in question, with the contact information redacted where the delegates had provided personal contact details.

14. Following this, the Commissioner wrote to the complainant on 24 April 2007 and informed him of the PCT's offer. He asked whether the complainant would be willing to accept this compromise.
15. The complainant responded to the Commissioner in a letter dated 20 May 2007, and stated that he was not willing to accept this compromise. He went on to state that he believed that the personal contact details should be released, and that, "where only contact details are available, then I suggest name + town / village or abbreviated postcode e.g. SK9 5** would avoid contravening the DPA whilst providing the geographic data sought."

Analysis

Procedural matters

16. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled:
 - to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - if that is the case, to have that information communicated to him.
17. The Commissioner believes that by citing section 40(2) to refuse to disclose some information, and later withdrawing that exemption, the PCT did not meet with the requirements of section 1(1).
18. The Commissioner also has concerns regarding the refusal notice issued by the PCT on 11 November 2005 in relation to the requirements of section 17.
19. Section 17(1) requires a public authority which is refusing a request to issue a notice which –
 - states that fact
 - specifies the exemption in question, and
 - states why the exemption applies.
20. Section 17(7) requires that a refusal notice must:
 - contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - contain particulars of the right conferred by section 50.

21. The notice issued on 11 November 2005 did not inform the complainant of which part of section 40 the PCT believed was engaged. Nor did it inform him of his right to appeal against this refusal, or the contact details of the Commissioner.
22. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

Exemptions

23. The PCT originally sought to withhold the list of delegate names, together with their contact details, under section 40 of the FOIA. The PCT has confirmed to the Commissioner that it had claimed section 40(2) and section 40(3)(a)(i) as it believed that the release of this information would be in breach of the data protection principles.
24. However, the Commissioner notes that the PCT has now offered to disclose to the complainant the list of delegates, with their job titles/details of the organisations they represented, and their contact details – where these are business contact details. Therefore he has not considered the withholding of this information any further in this Notice.
25. Nonetheless, he expects that this information will be disclosed to the complainant by the PCT, and he has therefore ordered the disclosure of this information in this Notice.
26. The PCT has, however, continued to cite section 40(2) in order to withhold the personal contact details. It has confirmed to the Commissioner that it believes that this information relates to the delegates private lives, not their professional lives, and the disclosure of this information would be in breach of the first principle of the DPA.

Section 40

27. Section 40(2) gives an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
28. One of the conditions listed in section 40(3)(a)(i) is where the disclosure of the information to any member of the public would contravene one of the data protection principles. It is this condition that the PCT is relying upon to withhold the information in question.
29. In this case the PCT has stated that it believes that the disclosure of the information in question would be in breach of the first data protection principle.
30. In order to establish whether this exemption has been applied correctly the Commissioner has first considered whether the withheld information constitutes the personal data of a third party, or parties.

31. Personal data is defined in the Data Protection Act 1998 as data which relate to a living individual who can be identified:
 - from those data, or
 - from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.
32. The information in question is the residential addresses, personal telephone numbers, and / or personal email addresses, of a number of named individuals. The Commissioner believes that this information relates directly to those individuals, and that the information is biographically significant in relation to those individuals.
33. Therefore, the Commissioner is satisfied that the information in question is the personal data of third parties.
34. In his letter to the Commissioner dated 20 May 2007 the complainant has suggested that the personal contact details could be partially redacted in order to avoid contravening the principles of the DPA. He has suggested that if only the name of the town or village, together with the abbreviated postcode, e.g. SK9 5**, were provided, this would avoid breaching the DPA principles.
35. The Commissioner is satisfied that the name of a town or village, together with a partial postcode, where a named individual lives, is still the personal data of that individual, as it is linked to that individual.
36. He has gone on to consider whether the disclosure of these details would contravene any of the principles of the DPA. As the PCT has referred directly to the first principle, he has focused on establishing whether the disclosure of this information would be in breach of this principle.

The first principle

37. The first principle of the DPA requires that personal data is processed fairly and lawfully and that, in cases of personal data which is not sensitive personal data, at least one of the conditions in Schedule 2 of the DPA is met.
38. In order to consider whether the disclosure of the information would be in line with the first principle the Commissioner initially looked at establishing whether the disclosure of this information would be fair.
39. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the 'reasonable expectation' of the delegates as to how the information would be used by the PCT and what the potential impact of disclosure would be on the individuals concerned.
40. In considering the 'reasonable expectation' of the delegates who provided personal contact details the Commissioner first asked the PCT whether the

delegates were given any express promise of confidentiality. The PCT has informed the Commissioner that it has been unable to find any evidence to show that such promises were given.

41. The PCT has, however, argued that, “where home addresses and personal email addresses have been provided, there is an expectation by the delegate, on the Trust, to use this information only for the purposes of providing information to them following the stakeholder meeting, for example: minutes of meetings, or reports produced.”
42. The Commissioner finds this a compelling argument. He also believes that the very fact that some of the delegates provided their home address details / personal email address strengthens the argument that this information was provided to the PCT in the expectation that it would not be provided to anybody else, and would only be used for a specific purpose.
43. Therefore the Commissioner has formed the view that the disclosure of this information would not be within the ‘reasonable expectation’ of the individuals concerned.
44. In regard to the potential impact that the disclosure of this information would have on the individuals concerned the Commissioner believes that as this information relates to individuals’ homes, by extension it also relates to their private and family lives. Therefore he believes that the disclosure of this information would have a potential impact on the private and family lives of the individuals concerned.
45. In relation to the complainants suggestion that the release of a redacted version of the personal contact details, such as a partially redacted postcode, would avoid breaching the principles of the DPA, as stated in paragraph 35, the Commissioner believes that this information would still constitute the personal data of the delegates. Furthermore he believes that with this information, it would be relatively straight forward, using publicly available sources, to identify the exact residential address of that individual. Therefore the Commissioner believes that the disclosure of this partially redacted personal contact details would still impact on the private and family lives of the delegates, and, for the reasons listed above, he considers that this would be unfair.
46. This conclusion is consistent with the Commissioner’s guidance issued on section 40 of the FOIA. This guidance suggests that “information which is about the home or family life of an individual, his or her personal finances, or consists of personal references is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned”.¹ The Information Tribunal acknowledged this approach in a recent decision on the application of section 40, stating, “we accept the approach of the Commissioner’s Guidance which recognised that in determining fair processing regard can be made as to

¹ Freedom of Information Act Awareness Guidance No 1, page 4.

whether the personal data relates to the private or public life of the data subject to whom it relates”².

47. Whilst the Commissioner acknowledges that the delegates attended the stakeholder meeting in a professional capacity, and that the information was provided whilst they were acting in a professional capacity, in the instances where the delegates provided personal contact details, he does not accept that this information itself relates to the professional lives of the delegates.
48. Furthermore, whilst the complainant has argued that the delegates, “should not remain anonymous by only providing exempt personal contact details”, the Commissioner does not accept this reasoning, and believes that as long as a delegates name, as well as their job title/organisation details is released, the delegate will not be anonymous.
49. Taking this into consideration, the Commissioner has formed the view that the disclosure of this information to the public at large would be unfair, and in breach of the first principle of the DPA. Consequently he is satisfied that the exemption under section 40(2), by way of section 40(3)(a)(i), is engaged in respect of this information.
50. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.
51. Section 40(2), by way of section 40(3)(a)(i), is an absolute exemption and is therefore not subject to the public interest test.
52. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

The Decision

53. The Commissioner’s decision is that the PCT dealt with the request in accordance with the requirements of the FOIA, in that it applied the exemption listed at section 40(2) correctly to withhold the personal contact details.
54. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the FOIA:
 - The PCT breached section 1 of the FOIA by failing to provide some of the information requested by the complainant having incorrectly concluded that names of the delegates were exempt from disclosure under section 40(2).

² House of Commons v Information Commissioner and Norman Baker MP, Appeal Number: EA/2006/0015 and 0016, paragraph 77.

- The refusal notice issued by the PCT on 11 November 2005 did not meet with the requirements of section 17 of the FOIA.

Steps Required

55. The Commissioner requires the PCT to take the following steps to ensure compliance with the FOIA:
 - Disclose to the complainant a list of the delegate names, together with their job titles/organisations, and their contact details, where those contact details are not personal, residential, details.
56. The PCT must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

57. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Right of Appeal

58. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 13th day of June 2007

Signed

**Marie Anderson
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 17

- (1)** A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2)** Where –
- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim –
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
 - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3)** A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
 - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4)** A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where:
 - (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under subsection (1), (3) or (5) must-
 - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

Section 40

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if-
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

- (4)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5)** The duty to confirm or deny-
- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).
- (6)** In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7)** In this section-
- "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act.