

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

Public Authority: The Pennine Acute Hospitals NHS Trust
Address: Trust Headquarters
North Manchester General Hospital
Delaunays Road
Crumpsall
Manchester
M8 5RB

Decision (including any steps ordered)

1. The complainant has requested information broadly concerning employment details of a number of named individuals.
2. The Commissioner's decision is that the public authority was entitled to withhold the information on the basis of section 40(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 April 2013, the complainant wrote to the Trust and requested information in the following terms:
 1. *Copies of the following contracts*
 - *Associate specialists*
[6 Named individuals]
 2. *Weekly job plan with number of PA's being paid of the following*
 - *Associate specialists*
[6 Named individuals]

3. *Copies of the following contracts*

[5 named individuals]

4. *Transitional financial (anonymised) statements of the following doctors (that is at the time of the change of staff grade to speciality doctor/associate specialists) it can be obtained from pay roll department*

[7 named individuals]

5. *All (extra) imitative work (Clinic, Endoscopies and Theatres) from 10th November 2011 to 25th April 2013 allocated by the Trust to the following doctors with date, place and time. All this information is on the computer and can be printed in 5 minutes by waiting list co-ordinators*

[11 named individuals]

5. The Trust responded on 22 May 2013. The Trust expressed its view that the requests for information were very similar to a previous request it had received. It therefore explained that section 40 applied as it had similarly done in the previous request.

Scope of the case

6. The complainant contacted the Commissioner on 27 May 2013 to complain about the way his request for information had been handled.
7. The Commissioner has to consider whether the Trust was correct to apply section 40(2) to the requested information.

Reasons for decision

Section 40(2) – Requests for third party personal information

8. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
9. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into possession of the data controller.

Personal data

10. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, had them as its main focus or impacts on them in any way.
11. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met and (in circumstances involving the processing of sensitive person data) at least one of the conditions of schedule 3 should be met.
12. The Commissioner considers that the withheld information relates to the named individuals. The information requested specifically relates to employment details between the named individuals and the Trust.
13. The complainant explained that request 4 could be anonymised. However, the Trust explained that even by anonymising the financial statements this would not sufficiently protect the identity of the individuals and/or protect their personal data.
14. In the response to the complainant, the Trust stated that in providing the requested information, it would breach the first principle of the DPA. The Trust further concluded that disclosure would not be fair to the individuals involved who had no expectations that their personal information would be made publicly available. In addition, the Trust stated that it could not identify any conditions in either schedule 2 or 3 that would justify disclosure.
15. The Commissioner has questioned whether request 2 and 5 constitute personal data. The Trust explained that the reason it holds the number of programmed activities (PA's) and any extra initiative work undertaken, is primarily to ensure individuals are remunerated. The Trust further explained that the release of weekly job plans has already been provided in a previous request and the Trust does not see how redaction can take place with regards to provision of the numbers of PAs, as it would be clear to the requester what redacted information relates to which individual.

16. The Trust also stated that the complainant could potentially work out how much the named individuals were remunerated. This is because the information requested in requests 2 and 5 would provide a number of how many sessions a named individual carried out and as there is a set price for each session, a total figure could be calculated.
17. Taking this into account, as well as the fact that the requests relate to a small number of named individuals, the Commissioner considers that the information in requests 2 and 5 would constitute personal data. Given the small number of individuals identified in the request the Commissioner does not consider that the requested information could be sufficiently anonymised so as to mean that the named individuals could not be identified from it.
18. As the Commissioner finds that the withheld information in its entirety constitutes personal data he has concluded that the information falls within the scope of the exemption.

The Commissioner's response to fairness

19. The Commissioner has gone on to consider whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner take into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations of the data subject

20. The Trust explained that it had approached all of the named individuals and they all felt the information requested was their personal information and they did not wish for it to be released into the public domain. The Trust also explained that the Medical Director advised against the release of the information.
21. The Commissioner understands that the individuals named did not give consent to the release of the information. It is important to note that consent is not a determining factor however, it is a factor that will be considered when taking into account the reasonable expectations of the data subject.

22. The information that has been requested broadly concerns the named individual's contracts of employment, work plans, initiative work undertaken and financial information. Given the nature of this information the Commissioner would therefore consider that it would be within the reasonable expectations of the named individuals for this information to not be put into the public domain.

Would disclosure cause damage and distress to the data subject?

23. The Trust has explained that the release of the requested information could have actual detriment to the named individuals including a detrimental effect on relationships between colleagues, in particular the loss of trust in staff of the Freedom of Information handlers and disengagement from management.

24. The Trust further explained that

"The individuals concerned will be of the view that management will actively safeguard their personal data and any deviation from this could have a wide reaching and negative effect upon the relationship between clinicians and management.

There is a possibility that the release of the requested information could have an effect on their private life such as cause prejudice to their interests in ongoing financial or legal negotiations".

25. The Trust expresses the fact that generally an employee should be able to expect employment contacts and detailed financial information would be kept confidential and not disclosure to the public at large.
26. The Commissioner would generally expect information of this nature to be confidential. Therefore he is satisfied that the disclosure of this information would cause damage and distress to the named individuals.

The legitimate public interest

27. The complainant has expressed to the Commissioner that he was dissatisfied with the response from the Trust. He has explained that his request for information does not seek any personal data. However, the Commissioner disagrees with this, and considers that the requested information does constitute the personal data of the named individuals.
28. The public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainants) accessing the withheld information.

29. The Commissioner considers that there is a legitimate public interest in openness and transparency. The Commissioner notes that the Trust did provide the complainant with a template contract and the weekly job plans of the named individuals in a previous request.
30. The Commissioner notes that in response to a previous request, the Trust disclosed weekly job plans of a number of individuals. In relation to the requests in question in this case, the Commissioner considers that releasing more detailed information about the individual's weekly job plans would interfere with the legitimate interests of the named individuals and it would therefore be unfair to release information of this type.
31. The Commissioner considers that the reasonable expectations of the data subjects are not outweighed by any legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances. The Commissioner therefore considers that the exemption of section 40(2) is engaged and that the Trust was correct not to disclose the withheld information.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
Group Manager – Complaints Resolution
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