

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2016

Public Authority: Dr Vasserman and the Neaman Practice

Address: 15, Half Moon Court
London
EC1A 7HF

Decision (including any steps ordered)

1. The complainant has requested information relating to his own medical history, together with the contact details of the bodies that supervise General Practitioners and any information held about operation "Foreigner". The Practice dealt with the complainant's right of access to information about his own medical treatment under the provisions of the Data Protection Act 1998 (DPA). It also provided the details of a number of bodies responsible for regulating different aspects a GP's work. It confirmed that it did not hold any information relating to operation "Foreigner". This information was requested in January 2016 but the practice only provided a substantive response in August.
2. The Commissioner's decision is that the Practice breached sections 10 and 17(1) of the FOIA which, collectively, require a public authority to confirm whether the requested information is held and, if so, to either provide that information or inform the applicant why the information is exempt from disclosure, within twenty working days.
3. However as the public authority has now responded to the request for the purposes of this decision notice the Commissioner does not require it to take any further action in this matter.
4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The actual duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions rests with each GP, or, as is the case here, with the GP that

the request was directed to. However the Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice, or a single GP within the practice, it is reasonable to expect for convenience that the practice will act as the single point of contact and provide a response on behalf of the GPs concerned.

Request and response

5. The complainant made two requests. On 11 January 2016, the complainant wrote to the practice and made a series of requests concerning his recent experiences and medical treatment. As these requests were for his own personal data the Commissioner does not consider it appropriate to set them out in this notice. However in amongst those requests was one made in the following terms:

"What do you know about operation under code name "Foreigner"?"

6. The second request was made on the 18 January 2016. Again the complainant's correspondence contained a series of requests relating to his treatment by the practice which amounted to requests for his own personal data. Included in the email though was one request for:

"Please send me full names and addresses of medical and government bodies, supervising GPs and your Practice for further complaints if necessary."

7. The Practice recognised that those elements of his requests which related to his own personal data should be dealt with under the provisions of the DPA and promptly contacted him about those matters. However it only provided him with a substantive response to the two FOI requests set out above on 1 August 2016. The practice gave him the details of three organisation which are responsible for regulating or dealing with complaints about different aspect the Practice's or a GP's performance. The Practice also confirmed that it did not hold any information on operation "Foreigner".

Scope of the case

8. The complainant contacted the Commissioner 20 May 2016 to complain about the way his request for information had been handled. As already explained, the majority of the information he requested was his own personal data. The complainant's right of access to such information is provided by the DPA and the Commissioner has considered whether the Practice complied with its obligations under the DPA as a separate

matter. This notice only deals with the Practice's obligations under the FOIA and whether it complied with those obligations when dealing with his requests.

9. The specific matter to be decided is whether the Practice dealt with the complainant's requests within the time limits set out in FOIA.

Reasons for decision

Section 10 – time for complying with a request

10. Section 1 of FOIA provides that when a public authority receives a request it is obliged to confirm whether it holds the information and, if so, to communicate that information to the applicant, unless of course it is covered by one of the exemptions which allow a public authority to withhold information.
11. Section 10 of the FOIA states that a public authority should provide this confirmation and, if required, communicate the information within twenty days of the receipt of the request.
12. As far as the two parts of the requests are concerned which were not for the complainant's own personal data, the Practice did ultimately provide a response by confirming that it did not hold any information on operation "Foreigner" and by communicating the details of the bodies which regulate or deal with complaints about GPs. However this response was not provided until August 2016. This is outside the twenty working days permitted.
13. If the complainant is not satisfied that the response provides him with all the information he is entitled to, he should ask the Practice to carry out an internal review of how it handled these aspects of his requests. Once the Practice has completed its review, if the complainant remains dissatisfied, he may make a fresh complaint to the Commissioner about whether or not he has received the information set out in the requests at paragraphs 5 and 6.

Section 17(1) –duty to provide a refusal notice within the time for complying with a request.

14. As already mentioned, a public authority is only required to communicate information under the FOIA if it is not protected by any of the exemptions. Section 40 of the FOIA deals with exemptions for personal data. In particular, section 40(1) provides that a public authority is not obliged to provide information if it constitutes the personal data of the individual making the request.

15. Personal data is information which both identifies an individual and is about that individual. The Commissioner has considered the complainant's correspondence to the Practice. Apart from the two requests set out in paragraphs 5 and 6 above, they are about the treatment he received from the Practice. The Commissioner is satisfied that any such information the Practice does hold could only be personal data about him. Under the FOIA such information is therefore exempt and he has no right of access to it under FOIA.
16. There are two reasons why people who make requests for information have no right of access to their own personal data under the FOIA. Firstly, a disclosure under the FOIA is considered to be a disclosure to the world at large, not just to the person making the request. In a great many situations it would be wrong to put an individual's private information into the public domain. This is certainly the case where the information concerns medical records.
17. Secondly there is an alternative means of obtaining personal data about yourself. The DPA regulates how those holding personal data can use that information. It also specifically provides individuals with a right of access to their own personal data and deals, in detail, with how such requests should be handled. Therefore rather than dealing with a request for one's own personal data under the FOIA it is appropriate to deal with it in accordance with the provisions of the DPA. The Commissioner has already exercised her powers under the DPA to consider the complainant's concerns over how the Practice handled his request for his own personal data and he has been informed of the outcome.
18. As far as the FOIA is concerned that information is exempt from disclosure under section 40(1). Section 17(1) of the FOIA sets out what a public authority should do when information is exempt. This includes informing the applicant in writing which of the exemptions applies and why the information is exempt under that provision. Strictly speaking therefore the Practice should have issued the complainant with a notice under section 17(1) explaining that some of the information he had requested was exempt under section 40(1) because it was his own personal data. Very often however this is not necessary and can even be more confusing than it is helpful.
19. This is because individuals cannot always be expected to know exactly which piece of legislation should be used to when seeking information. It is not uncommon for people to mistakenly refer to the FOIA when making requests for their own personal data. Usually once the organisation who receives the request picks it up and starts dealing with it, it is made clear to the applicant which piece of legislation is the correct one.

20. The Commissioner notes that in this case the Practice did initiate contact with the complainant with a view to dealing with his requests under the DPA as far they related to his own personal data.
21. Nevertheless, technically the Practice did fail to provide the complainant with a notice under section 17(1) explaining that the information was exempt under section 40(1) within twenty working days. It therefore breached section 17(1). However as this notice explains why the Practice did not respond to the complainant's request for his own personal data the Commissioner does not require the Practice to issue a separate notice under section 17(1).

Other matters

Internal review

22. As explained at paragraph 13, if the complainant is not satisfied with the response he has received to his requests regarding the contact details of regulators or information on operation "Foreigner" he must now ask the Practice to carry out an internal review. Although there is not statutory time limit on carrying out such reviews the Commissioner is very clear in her guidance that most reviews should only take twenty working days to complete and in no circumstances should they take longer than forty working days.
23. Finally the Commissioner is aware through correspondence the complainant has copied to her, that he believes the GP to whom he made his request is obliged to personally respond to his queries. Paragraph 4 explains that although the legal responsibility to deal with requests made to them rests with the GP, this does not prevent someone else responding on their behalf. It simply means that the GP is still legally responsible for the response which was provided and any decision notice should therefore be served upon that GP.

Right of appeal

24. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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

Rob Mehan
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