

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2017

Public Authority: Park End Surgery
Address: Bridgewater House
7 Printers Avenue
Watford
WD18 7QR

Decision (including any steps ordered)

1. The complainant has requested information regarding the number of additional hours worked and the additional wages received by a named GP whilst participating in a government pilot project.
2. The Commissioner's decision is that the practice has correctly applied section 40 (2) of the FOIA to the information.
3. The Commissioner does not require the practice to take any steps.
4. The Commissioner notes that a medical practice itself is not for the purposes of FOIA a public authority. Rather, each GP who provides primary medical services is a public authority themselves and has a duty to reply to a request in accordance with section 1 of FOIA. However, the Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect that the practice will act as the single point of contact and process the request on the doctors' behalf. For the purposes of this decision notice all references to the medical practice should be regarded as referring to the public authority.

Request and response

5. On 28 November 2016, the complainant made the following request for information:

“In December 2014 your Park End surgery was part of a pilot project Prime Minister’s fund to increase weekend access to patients, there were GP appointment from 8am to 8pm seven days a week.

The project was through the Watford Care Alliance, formed by 11 practices, and offering seven-day opening jointly via two hub practices, commissioned by NHS Herts Valley CCG, after being selected for the first wave of the Prime Ministers’ GP seven-day access pilots.

According to CCG, the area received £794,620 from the £50 million fund, which it said would pay for an extra £16,000 GP appointments per year.

My freedom of information questions are:

1. *How much of £794,620 did McCann & Partners receive?*
2. *How much extra in wages and salary did GPs in McCann & Partners receive*
3. *How many hours extra did GPs in McCann & Partners work on individual basis?*
4. *How much extra in wages and salary for December 2014, January 2015 and February 2015 participation in the project did GP [redacted] earn?*
5. *How many hours extra for December 2014, January 2015 and February 2015 participation in the project did GP [redacted] work?”*
6. On 5 December 2016, the practice responded. In relation to point 1 of the request, it confirmed that GPs at the practice received £88,373,00. In relation to points 2 to 5 of the request, it said that this information relates to individual members of staff and therefore it is unable to provide any assistance with these parts of the request.
7. On 7 March 2017, the complainant requested an internal review in relation to points 4 and 5 of the request.
8. The practice provided an internal review on 8 March 2017 and applied section 40(2) of the FOIA to the information.

Scope of the case

9. The complainant contacted the Commissioner on 9 March 2017 to complain about the way his request for information had been handled.

10. The Commissioner has focused her investigation on whether the practice is correct to withhold the information that has been requested (under points 4 and 5 of the request) under section 40(2) of the FOIA.

Reasons for decision

11. Information is exempt from disclosure under section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

Is the information personal data?

12. Personal data is defined in section 1 of the Data Protection Act (DPA) as follows:

"... 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 likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual."

13. The Commissioner has carefully considered the information that has been requested and she is satisfied that it is personal data.
14. The complainant has requested information about a specific named individual that tells the public something about them (the number of additional hours they worked and the additional wages they received), and therefore this information is personal data because it relates to a living individual who can be identified from it.

Would the disclosure of the information breach any of the data protection principles?

15. For section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.
16. The relevant principle in this case is the first data protection principle. This states:

"Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

At least one of the conditions in schedule 2 [DPA] is met....."

17. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - the reasonable expectations of the individual in terms of what would happen to their personal data; and
 - the consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?
18. The Commissioner notes that the practice publishes the average salary of its GPs delivering NHS services to patients on its website. The Commissioner also notes that in response to the request, the practice has provided the complainant with information about the total amount GPs at the practice collectively received whilst participating in the pilot project (£88,373,00).
19. The practice argues that the information that has been requested relates to the number of additional hours a particular GP worked and the additional salary they received whilst participating in the government pilot project, which they have an expectation will remain private and confidential. The GP does not consent to the disclosure of this information.
20. The practice argues that the information has the potential to impact upon the GP both in respect of the partnership business and their professional capabilities, depending upon the complainant's intention to use the information.
21. The Commissioner considers that the GP would have an expectation that the practice publishes a GPs average salary on its website, and that it may provide information about the total sum GPs at the practice collectively received whilst participating in the pilot project. She also considers that the GP may have an expectation that limited information about their hours and availability would be provided to patients when contacting the practice to schedule an appointment.
22. The Commissioner considers however that it would not be obvious to the GP that the additional number of hours they individually worked and the additional wages they individually received whilst participating in the government pilot project would be disclosed to the general public in response to an FOI request. They would have no expectation that that would be the case. The practice already provides a GP's average salary on its website and it has also provided information about the total amount GPs collectively received whilst participating in the pilot project. Disclosure of this information would fall within their expectations,

however disclosure of further information would not and would breach the first data protection principle (fairness).

23. The Commissioner accepts the practice's argument that, the GP would expect their personal data to be treated fairly. It would be reasonable for them to have an expectation of confidentiality that would extend to the practice refusing to disclose the information that has been requested.
24. In addition to the detriment of the breach of personal privacy which would occur from disclosure of the information that has been requested, the Commissioner has also considered whether there would be any further detriment to the GP should the information be disclosed. It is clear from the complainant's communications with the Commissioner that he has been critical of the GP's care of his father, and that other channels are being explored. The Commissioner considers that the disclosure of this information may well result in further criticism of the GP or their work by the complainant. The Commissioner does not consider that public disclosure of this information is necessary to meet the complainant's private interests as he has indicated that another process is underway.
25. The Commissioner considers that the GP would be likely to feel a degree of distress if the practice disclosed the information. In conclusion, the Commissioner finds that disclosing the information that has been requested would be unfair and thus contravene the first data protection principle. The Commissioner finds that the practice was entitled to refuse the request on the basis of section 40 (2) of the FOIA. This is an absolute exemption and therefore is not subject to the public interest test.
26. The complainant also argues that under section 6 (A) subsections (3) (b) and (c) of the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) Amendment Regulations 2014 ("the regulations") 'holiday information' should be disclosed to patients. The Commissioner has considered the complainant's argument but she does not consider the regulations to be relevant in this case, as the complainant has not requested holiday information in the request.
27. The complainant also argues that if the Commissioner finds that section 40(2) of the FOIA applies to the information that has been requested, then the information ought to be released under the exemptions to the non-disclosure provisions of the DPA, specifically conditions 5(a) and 5(d) of schedule 2, and conditions 3(a), and 6(a), (b) and (c) of schedule 3.

28. However, as the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether any of the schedule 2 and 3 conditions are met.

Right of appeal

29. 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

27. 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.
28. 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

Pamela Clements
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