

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2018

Public Authority: East of England Ambulance Service NHS Trust
Address: Whiting Way
Melbourne
Cambridgeshire
SG8 6EN

Decision (including any steps ordered)

1. The complainant has requested a copy of the incident log relating to a specific incident. The East of England Ambulance Service NHS Trust (the Trust) refused the request on the basis of the section 31 exemption (Law Enforcement). During the Commissioner's investigation the Trust also cited sections 40 (third party personal information) and 41 (information provided in confidence) to the information.
2. The Commissioner's decision is that the Trust has demonstrated that section 31 is engaged and the public interest favours maintaining the exemptions. However, the Commissioner also finds that the Trust breached section 10(1) of the FOIA as it failed to provide a response within 20 working days. As a response has now been provided she requires no steps to be taken.

Request and response

3. On 24 February 2017 the complainant requested the following information:

`* Please provide a copy of the incident log in relation to a callout received on [dated redacted] 2010, which related to a woman named [name and place redacted].

* Please also provide a copy of the CAD report relating to this callout and [name redacted]'s death.`
4. On 11 July 2017 the Trust responded and refused to provide the information citing section 31 (Law Enforcement).

5. The complainant requested an internal review on 11 July 2017. He disputed the application of the exemption section 31 as there had been no proceedings at the time of the request.
6. The Trust provided the outcome of its internal review on 20 October 2017 and upheld the decision to refuse the requested information under section 31.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2017 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the Trust also cited sections 40 (third party personal information) and 41 (information provided in confidence) to the information. The Trust stated that it stood by its original application of section 31 in this case but would not wish to release any Patient Care Records (patient's ambulance medical record) under FOIA.
9. On 28 June 2018 the Commissioner sought an informal resolution with the complainant as it was her preliminary view that the Trust was correct to refuse to provide the requested information. The complainant confirmed that he wished to continue with the complaint and provided evidence that the Trust had provided him with similar information on a previous case.
10. Therefore, the Commissioner considers the scope of her investigation to be to determine if the Trust has correctly applied the provisions of sections 31, 40 and 41. She will first consider the exemption at section 31.

Reasons for decision

Section 31 – law enforcement

11. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.

12. The Trust applied section 31(1)(a). The relevant parts of section 31 of the FOI provide that:

'(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime

13. The complainant has argued that at the time of the FOIA request, there was no police investigation. He explained that the request relates to the death of a woman in 2010 and at the time, her death was attributed to natural causes. Following the conclusion of a subsequent investigation into another woman's suspicious death and questions from her family and members of the press, the police decided (after the point at which the FOIA request was made) to investigate the woman's death in 2010.
14. The Trust initially relied on section 31(1)(a) in that if the information was released it could negatively interfere with the prevention or detection of crime. The Trust had taken steps to contact the police who confirmed the investigation was ongoing and that they considered the release of this information to be prejudicial to their investigation into a suspicious death.
15. The Trust has not heard back further from the police in relation to the current status of this case.

Is the exemption engaged?

16. The Commissioner has first considered whether the exemption at section 31(1)(a) was engaged.
17. In order for a prejudice based exemption such as that contained within section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met.
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
18. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the public authority generally relates to the interests which the exemption contained at section 31(1)(a) is designed to protect. Specifically, in terms of the likely prejudice to the ongoing police investigation, the consequent likely effect of impeding the investigation would be prejudice to the prevention or detection of crime, both of which are interests relevant to the exemption.
 19. The Commissioner notes the complainant's point that there was no investigation at the time of the FOIA request (24 February) but is satisfied that by the time of the response (11 July) there was a police investigation. The Trust had contacted the police who confirmed that the investigation was ongoing. From her own research, the Commissioner notes that the local press reported on 4 March that the police would be investigating this death from 2010.
 20. The Commissioner is satisfied that the prejudice alleged by the Trust is real and of substance, and there is a causal relationship between the disclosure of the requested information and the prejudice which the exemption is designed to protect. She must however establish whether disclosure would be likely to result in the prejudice alleged (ie the third criterion).
 21. The Commissioner has examined the withheld information and she accepts it is likely that the information would be useful to the police's investigation into the suspicious death. Consequently, she has concluded that disclosing the withheld information would pose a real and significant risk of prejudice to the prevention or detection of crime.
 22. Therefore, the public authority was entitled to engage the exemption at section 31(1)(a).

Balance of the public interest

23. The exemption at section 31(1)(a) is qualified by the public interest test set out in section 2(2)(b) FOIA. Therefore, the Commissioner must determine whether in all the circumstances of the case, the public

interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

24. The complainant has argued that it is in the public interest to view the withheld documents (the incident log and the CAD report). The information is *'capable of helping inform the public about this woman's death and what actions taken by ambulance staff may have led to the death being attributed to natural causes. There is a compelling public interest in transparency surrounding the actions of ambulance staff in this case and why it has taken seven years for an investigation to be launched.'*
25. The complainant also argued that he had been provided with the incident log, the CAD report and the investigation report in a previous case after a murder investigation had been launched.

Public interest arguments in favour of maintaining the exemption

26. The Trust has argued that although some limited information on the death in 2010 is already in the public domain, the information concerning the Trust's attendance to her is not in the public domain. Disclosure of the withheld information is not in the public interest.

Balance of the public interest arguments

27. The Commissioner has considered both the complainant's and the Trust's public interest arguments.
28. The Commissioner asked the Trust to comment on the complainant's statement that he had received similar information in the past. The Trust stated that these are different circumstances:

'One of the key differences is that in the first case, there were some issues around actions of the crew and therefore this weighted the public interest test in favour of disclosure. In the current case there are no issues with the Trust and therefore no internal investigation taking place.'

29. The Commissioner considers each FOIA complaint to her on an individual case basis. She accepts that the Trust may have considered a previous request in a different way but as it did not become a complaint to the Commissioner, she is not able to comment on what may or may not have been previously provided by the Trust.
30. The Commissioner considers that there is a significant public interest in withholding information that would otherwise prejudice the prevention

or detection of crime i.e. the police's investigation into the death in 2010 following the investigation into another suspicious death 7 years later.

31. The Commissioner concludes that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Commissioner therefore finds that section 31(1)(a) is engaged in relation to the withheld information and the public interest favours maintaining the exemption.
32. The Commissioner notes that the Trust would not wish to release any Patient Care Records (PCR) which is the patient's ambulance medical record under FOIA. However, in this case the complainant has only requested the incident log and the Computer Aided Dispatch (CAD) report and the Commissioner has found that the Trust has correctly cited section 31(1)(a) to this information.
33. Therefore, the Commissioner does not need to go on to consider if the other exemptions at sections 40 and 41 have been correctly cited in this case.

Procedural matters

34. Section 10(1) of the FOIA states that a public authority should respond to a request promptly and in any event no later than 20 working days following receipt. It is apparent in this case that the Trust failed to respond to the complainant's request within 20 working days and so breached section 10(1) of the FOIA.

Right of appeal

35. 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

36. 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.
37. 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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