

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2019

Public Authority: Barts Health NHS Trust
Address: 9 Prescott Street
London
E1 8PR

Decision (including any steps ordered)

1. The complainant has requested information relating to physical assaults on staff. The Barts Health NHS Trust (the Trust) refused to provide some of the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the Trust has incorrectly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the suppressed numbers.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 December 2018 the complainant made the following request for information (the Commissioner has added the question numbers.):

'Under the Freedom of Information Act, please could you provide me with the following information (most likely as reported through the Security Incident Reporting System (SIRS)):

1. *The total number of physical assaults on staff recorded in 2016/17 (financial year from April 2016 to March 2017) and in 2017/18 (financial year from April 2017 to March 2018)*
 2. *The total number of physical assaults on staff recorded that involved medial [sic] factors in 2016/17 and in 2017/18*
 3. *The total number of times physical injury was caused in 2016/17 and in 2017/18*
 4. *The total number of times was restraint used following a physical assault in 2016/17 and in 2017/18*
 5. *The total number of times was seclusion used following a physical assault in 2016/17 and in 2017/18*
 6. *Total number of criminal sanctions applied in relation to physical assaults in 2016/17 and 2017/18*
 7. *Total number of civil and administrative sanctions applied in relation to physical assaults in 2016/17 and 2017/18*
 8. *The total number of times intended police action in relation to physical assaults was recorded as charge in 2016/17 and 2017/18.*
 9. *The total number of times intended police action in relation to physical assaults was recorded as verbal warning in 2016/17 and 2017/18.*
 10. *The total number of times intended police action in relation to physical assaults was recorded as no action in 2016/17 and 2017/18.*
 11. *The total number of times it was recorded that the victim did not want police to pursue the matter in relation to physical assaults in 2016/17 and 2017/18.*
 12. *Total number of staff reported by the trust at March 31, 2017 and at March 31, 2018.*
- Please provide this information as a spreadsheet or CSV file.'*

6. On 31 December 2018 the Trust responded to each part of the request. It refused to provide the exact numbers where they were under 5, as disclosure of the data might potentially result in the identification of the individuals involved. It cited section 40 to the following parts of the request:
 - for physical injury (moderate harm) in 2016/17 (Q3)
 - for police called (alleged perpetrator removed from premises) in 2016/17 and 2017/18. (Q8)
 - for police called (verbal warning given) in 2016/17 and 2017/18. (Q9)
 - for police called (no action taken - alleged perpetrator left before police arrived) in 2016/17. (Q10)
7. On 7 January 2019, the complainant requested an internal review. She argued that the exact numbers should not be suppressed under section 40.
8. On 15 January 2019 the Trust provided the outcome of the internal review. It upheld the decision to refuse the exact numbers and cited section 40(2) (Personal Information) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 4 May 2019 to complain about the way the request for information had been handled and asked that the suppressed figures be released.
10. During the course of the investigation the Trust confirmed that it had provided a more granular breakdown than requested for Q3 and Q10.
11. For Q3 (*The total number of times physical injury was caused in 2016/17*) the Trust did not provide a total but provided more specific categories on the level of harm. It provided a figure for 'low harm' and suppressed the figure for 'moderate harm' as <5.
12. For Q10 (*The total number of times intended police action in relation to physical assaults was recorded as no action in 2016/17*) the Trust did not provide a total but provided more specific categories of no action. It provided a figure for 'no action taken' and suppressed the figure for 'no action taken - alleged perpetrator left before police arrived' as <5.
13. In both cases, the Trust stated that the further breakdown was intended to be helpful but it could not now provide a total without revealing the suppressed figure.
14. In relation to Q8 (*The total number of times intended police action in relation to physical assaults was recorded as charge in 2016/17 and 2017/18*) the Trust stated that the figures (for alleged perpetrator removed from premises) should not have been provided as *'they do not relate to whether the alleged perpetrator was charged – the Trust does not hold information on whether the police went on to charge the alleged perpetrator.'* However, in her request for an internal review and in her complaint to the Commissioner, the complainant asked that these suppressed figures be provided.
15. The Commissioner considers the scope of this case to be to determine if the Trust has correctly applied section 40(2) FOIA to the suppressed figures withheld at Q3, Q8, Q9 and Q10.

Reasons for decision

Section 40 Personal information

16. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

17. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation (GDPR) ('the DP principles').
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it is not personal data then section 40 of FOIA cannot apply.
19. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the information personal data?

20. Section 3(2) of the DPA defines personal data as:-

"any information relating to an identified or identifiable living individual".

21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
24. The Commissioner's guidance on what is personal data² states that if information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.

¹ As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

²<https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> & <https://ico.org.uk/media/for-organisations/documents/1549/determining-what-is-personal-data-quick-reference-guide.pdf>

25. The information in this case doesn't directly identify individuals. However, because the name of an individual is not known, it does not mean that an individual cannot be identified. The aforementioned guidance states the following:

'A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance that those who may receive the data will be able to identify particular individuals.'

It also states:

'The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.'

'When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies.'

26. The Commissioner directed the Trust to the recent first tier tribunal decision which considered the suppression of small numbers [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1995/Miller,%20Claire%20EA-2016-0265%20\(20.04.17\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1995/Miller,%20Claire%20EA-2016-0265%20(20.04.17).pdf) and the Upper Tribunal decision which upheld the decision that individuals would not be identified if the small numbers were disclosed. (Information Commissioner v Miller – GIA/2444/2017 (EA/2016/0265))
27. The Trust stated that *'the number of people possibly involved is reasonably small and even smaller when considering Trust staff who were the victims of assault, therefore identification is far more likely.'*
28. The Trust *'believes that the identity of the data subjects could be discerned through further Freedom of Information requests, approaches to staff, patients and visitors. It should be considered that staff members could be identified more easily by their colleagues who may be aware of some of the circumstances surrounding an incident. In both the case of staff member and alleged perpetrator, there may have been a number of witnesses who could provide information that may be matched to this and lead to identification'*.

29. The Trust also stated that *'the number, combined with different pieces of information collected together, could lead to the identification of a particular person'*.
30. The Commissioner notes that the Trust employs more than 16,000 staff over five hospitals throughout the City of London and East London. The Commissioner also notes that the Trust has not provided to the complainant any identifiers with the numbers such as location or hospital department.
31. The Commissioner is not convinced that the suppressed numbers identifying the number of physical assaults for physical injury (moderate harm)(Q3), for police called (alleged perpetrator removed from premises)(Q8), for police called (verbal warning given)(Q9) and for police called (no action taken - alleged perpetrator left before police arrived) (Q10) would lead to the identification of the individuals themselves.
32. Although there is potentially a risk of self-identification in that a person may point to the suppressed number for physical injury (Q3) and decide that they had witnessed or their injury was one of those few, it is not clear to the Commissioner how some-one else could link the number to an identifiable individual. There is no information by reference to an identifier such as a name, an identification number, location data or an online identifier and no information with any biographical significance.
33. The Commissioner is not convinced that the Trust has provided sufficient evidence to link the suppressed numbers to any of the identifiers as listed in paragraph 22 above.
34. The Commissioner considers that the information does relate to a living person but does not relate to a person who is identifiable. It is not reasonable to assume that individuals could be identified if the 6 suppressed numbers were disclosed.
35. Therefore, the Commissioner is satisfied that the requested information in this case does not constitute personal data. As it is not personal data then section 40 of FOIA cannot apply and the Commissioner does not need to go on to determine whether disclosure would contravene any of the data protection principles.
36. In conclusion the Commissioner has decided that the Trust has failed to demonstrate that the exemption at section 40(2) is engaged.

Other matters

37. In the future, the Commissioner would remind the Trust to consider each FOIA request very carefully so that the appropriate information that is within the scope of the request is identified and considered.

Right of appeal

38. 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@justice.gov.uk

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

39. 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.

40. 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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