

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2022

Public Authority: London Borough of Sutton
Address: Civic Offices
St Nicholas Way
Sutton
SM1 1EA

Decision (including any steps ordered)

1. The complainant has requested London Borough of Sutton (the council) to disclose a safeguarding report. The council refused to disclose the requested information citing section 41 of FOIA.
2. The Commissioner's decision is that the council is entitled to rely on section 41 of FOIA. He therefore does not require any further action to be taken.

Request and response

3. On 25 April 2022, the complainant wrote to the council and requested information in the following terms:

"Part of the investigation and closure phase involves producing a full report. Under the Data Protection Act I request to the Data Controller I see this report in its entirety, and request to see all paperwork pertaining to my Mum's safeguarding concern."
4. The council responded on 27 May 2022. It refused to disclose the requested information citing section 41 of FOIA.
5. The complainant requested an internal review on 27 May 2022.

6. The council carried out an internal review and notified the complainant of its findings on 22 June 2022. It upheld the application of section 41 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 26 May 2022 to complain about the way their request for information had been handled. At this time no internal review had been carried out. Following the receipt of the internal review response the complaint was accepted for full investigation. This occurred on 28 June 2022.
8. The Commissioner has not seen the withheld information, nor sought further submissions from the council. From various other cases he has considered, he is satisfied that section 41 of FOIA applies. The following section will explain why.
9. The complainant is reminded that FOIA is applicant blind. When considering requests for information the relevant consideration is whether the requested information is suitable for public disclosure. It is not whether the applicant should have sight of the requested information but whether the world at large can.

Reasons for decision

Section 41 – Information provided in confidence

10. Information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
11. The council said that the withheld information is information shared by the individual concerned and the services used for the purposes of assisting the council's safeguarding function.
12. The Commissioner is satisfied that the withheld information is therefore information obtained from another person and this element of the exemption is met.
13. When determining whether disclosure would constitute an actionable breach of confidence it is necessary to consider whether the information has the necessary quality of confidence and whether it was imparted in circumstances importing an obligation of confidence. Then, whether

disclosure would be an unauthorised use of the information to the detriment of the confider.

14. The Commissioner is satisfied that safeguarding information and the final safeguarding report is information that has the necessary quality of confidence. It is not trivial or otherwise accessible to the general public.
15. The withheld information would have been imparted in circumstances giving rise to an obligation of confidence. The Commissioner is satisfied that there is an implicit obligation of confidence where information is provided in the context of the relationship between patient and doctor and other medical professionals. Information of this nature is treated with the strictest of confidence.
16. In terms of disclosure causing detriment to the confider, the Commissioner is satisfied that where the information relates to a personal or private matter, it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. He considers a loss of privacy is itself detrimental. It is therefore not necessary for there to be any tangible loss to the original confider for private healthcare information to be protected by the law of confidence.
17. It is also accepted that the duty of confidence continues to apply after the death of the person concerned. This is in accordance with the Information Tribunal hearing of *Pauline Bluck v Information Commissioner and Epsom & St Helier University Hospitals NHS Trust* (EA/2006/0090).
18. Although section 41 is an absolute exemption (and there is no requirement to consider the public interest test), it is accepted that if there is an overriding public interest in disclosure it can be a defence to an action of breach of confidentiality.
19. It is noted that the complainant may feel their own personal interests in the matter are sufficient but the Commissioner does not consider this would be enough to constitute a public interest defence. There is weighty public interest in maintaining the confidentiality of this type of information and protecting the integrity of the patient/carer and medical professional relationship. There are also other mechanisms available to monitor the quality of care provided – the complaints procedures and the Parliamentary Health Service Ombudsman.
20. For the above reasons, the Commissioner is satisfied that section 41 of FOIA applies.

Procedural matters

21. The council accepted that it missed the statutory deadline by one working day (section 10 of FOIA requires a public authority to respond within 20 working days of receipt). This is not excessive and it is noted that the relevant team responded in eight working days once the request was provided to them. Nonetheless it still constitutes a breach of section 10 of FOIA.

Right of appeal

22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

23. 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.
24. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF