

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 February 2023

**Public Authority:** North East Ambulance Service NHS Foundation Trust

**Address:** The Waterfront  
Bernicia House  
Goldcrest Way  
Newcastle upon Tyne  
NE15 8NY

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to staff absence and bullying.
2. The Trust provided some information within the scope of the request but refused to provide the remainder, citing section 40(2) (personal information).
3. The Commissioner's decision is that the Trust was entitled to withhold the requested information under section 40(2).
4. The Commissioner does not require the public authority to take any steps.

## Request and response

---

5. On 30 August 2022 the complainant made the following request for information under FOIA:

“Please can you provide me with the following information – and for each question, giving a year by year breakdown for a) 2019-20 b) 2020 – 21 c) 2021-22:

  1. How many staff members at your trust have reported bullying/harassment abuse by another staff member for the aforementioned years.
  2. The Trust’s annual sickness absence % rate for the above years.
  3. The total number of staff who have left NEAS for the years above.”
6. On 28 September 2022 the Trust responded and disclosed all information except numbers below five for the first question.
7. The complainant requested an internal review on 28 September 2022. They disputed the Trust’s position that disclosure in response to 1a and 1c would identify any individuals. The complainant suggested the Trust provide a cumulative total in response to question 1.
8. The Trust provided the outcome to its internal review on 24 October 2022. It upheld its original position.

## Reasons for decision

---

9. 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.
10. In this case the relevant condition is contained in section 40(3A)(a) . 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 (‘the DP principles’), as set out in Article 5 of the UK General Data Protection Regulation (‘UK GDPR’).
11. The first step for the Commissioner is to determine whether the numbers below five represent personal data as defined by the Data Protection Act 2018 (‘DPA’). If not, then section 40 cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

**Is the withheld information personal data?**

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

“any information relating to an identified or identifiable living individual”.

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

15. 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.

16. 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.

17. The information being withheld in this instance is the number of staff who reported bullying or harassment by another member of staff for 2019 and 2021-2022. These two numbers are both below five. On the face of it, a number doesn't represent personal data. However, the Trust is concerned that 'because the withheld numbers are low (five or fewer), we believe that this information, when combined with other information either already in the public domain or known to particular individuals, may nevertheless make identification possible.'

18. The Commissioner understands that, at the time that the request was made, the complainant was employed by the Trust. The Trust explained that the complainant's role brought them into contact with a wide variety of individuals across the organisation and 'would have provided plenty of opportunities for them to build networks and friendships across a wide range of staff groups in all departments of our organisation; so that information about the actions and outcomes of others would be more readily asked for and/or shared.'

19. The Trust has assured the Commissioner that 'this requestor not only has a particular interest in this information, but also has additional knowledge of specific circumstances... which is not shared with the wider public.' The Commissioner doesn't deem it appropriate to explore this rationale any further within this decision notice, however, he notes that when considering whether anonymised data can be turned back into personal data, a public authority must consider the likelihood of individuals having and using the prior knowledge necessary to facilitate re-identification.

20. Furthermore, the Trust is concerned that disclosure would allow current members of staff to identify the individuals to whom the requested

information relates. The Commissioner agrees. Disclosing the information under FOIA would be the equivalent of making the same information available to all of the Trust's staff. These staff members would have access to information not available to the wider world which they could use to link the information to identifiable individuals.

21. Furthermore, given the small time frame to which the withheld information relates, the Commissioner considers that there is a likelihood of a particularly-placed member of staff being able to access sufficient information to be able to link the information to at least one of the individuals concerned. This is especially the case if any of the withheld information came from a member of staff in a relatively small team within the Trust.
22. Public authorities, and the Commissioner, must also take into account the consequences for any individual should reidentification occur. To reiterate, the withheld information relates to the number of staff members who have reported bullying/harassment/abuse by another staff member. Such incidents will have been reported with an expectation of confidence and, if an individual was approached about this matter this would likely cause them distress.
23. The Commissioner must adopt a rigorous, but realistic, risk assessment when considering whether the withheld information could lead back to the data subjects in question. He recognises that, as of February 2023, the Trust had approximately 3500 members of staff. However, the Commissioner is satisfied that the data subjects could be indirectly identified by the complainant, or another member of staff, in this case if this information were to be disclosed.
24. The complainant themselves also seems to acknowledge that this is a risk and in their internal review states 'this risk is reduced dramatically by amending my request as outlined above and adding the data sets requested in a total for the 3 years requested.' Even though the aggregated data for 2019 – 2022 was not the complainant's original request, the Trust has confirmed that it cannot provide the data in this format; it has already disclosed to the complainant that the requested information for 2020 was six and disclosing the cumulative total might assist the complainant in ascertaining the information being withheld in relation to 2019 and 2021.
25. Having considered the withheld information, the Commissioner is satisfied that the information relates to individuals at the Trust and any subsequent grievances that may have occurred. He is satisfied that this information both relates to and identifies particular data subjects given the contacts, and the information that the complainant may have gathered during their time employed at the Trust. This information

therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

26. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
27. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

28. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

29. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
30. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

31. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."

32. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under FOIA, it is necessary to consider the following three-part test:
  - i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

33. The Trust accepts that the complainant has a legitimate interest in the requested information. The Trust believes that it has met this legitimate interest in the responses it has provided to the complainant's other requests for information, which also relate to bullying and harassment. The Commissioner also notes that there is the broad legitimate interest in transparency and accountability that compliance with the request would represent.
34. The requested information is not otherwise in the public domain. Therefore, disclosure would be necessary to meet the legitimate interest in question.
35. However, the Trust is concerned that the legitimate interest being pursued here is largely a private one. The Commissioner disagrees – the Trust has confirmed that there is at least one instance of individuals being bullied by their colleagues, for the years 2019-2022. This information, and exactly how many such instances, would be of interest to at least the current staff, not just the complainant.
36. The Trust believes that 'the broader public interest in staff and organisational culture is covered during inspections by our regulator, the Care Quality Commission. Their latest inspection report was published as recently as 1 February 2023.' The Commissioner notes that this information would not have been available to the complainant at the time of their request. The report prior<sup>1</sup> was published in September 2019.
37. Ultimately, the Commissioner considers that there is a legitimate interest in this information, however, it does not override the legitimate interests of the data subjects in question, who would have been assured that their complaint would remain confidential to the rest of the Trust. The fact that the information is held, and the numbers are below five, meets the complainant's legitimate interest in this information, without potentially contravening any of the DP principles and the Trust was correct to withhold the information.

---

<sup>1</sup> [Provider section - RX6 North East Ambulance Service NHS Foundation Trust \(03/06/2019\) INS2-6954986521 \(cqc.org.uk\)](#)

## Other matters

---

38. The complainant is concerned with the accuracy of the information being withheld in response to this request, explaining to the Commissioner:

"In 2019, according to NHS staff survey results for NEAS, 43.2% of staff reported that after being bullied, harassed or abused, the incident was reported. 556 NEAS staff responded to this question. Therefore 43.2% equates to 240 members of staff reporting such incidents.

In 2021 according to the NHS staff survey result for NEAS, 43.5% of staff reported that after being bullied, harassed or abused, the incident was reported. 709 NEAS staff responded to this question. Therefore, 43.5% equates to 308 members of staff reporting such incidents."

39. The Commissioner notes that the NHS staff survey for 2021<sup>2</sup> breaks down experiences of harassment, bullying or abuse into the following categories: from patients/service users, members of their family or the public, from managers or from other colleagues. However, the survey only asks if the harassment, bullying or abuse was reported; it does not break down the reported instances into the aforementioned categories. Therefore, it's likely that the figures quoted by the complainant includes reported instances of harassment, bullying or abuse from patients/service users, members of their family or the public, as well as colleagues.

---

<sup>2</sup> [Core-questionnaire-2021.pdf \(nhsstaffsurveys.com\)](#)

## Right of appeal

---

40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**