

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 July 2016

Public Authority: East Lancashire NHS Hospitals Trust

Address: Royal Blackburn Hospital
Haslingden Road
Blackburn
BB2 3HH

Decision (including any steps ordered)

1. The complainant has requested information relating to a HepatoBiliary Multi-Disciplinary Meeting (HB MDT).
2. The Commissioner's decision is that East Lancashire NHS Hospitals Trust (the Trust) has correctly applied section 40(2) of the FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 December 2015, the complainant wrote to the Trust and requested information in the following terms:

"A full copy of the attendance records of those persons present at Royal Blackburn Hospital, HBP MDT meeting on 12th September 2014.

A full copy of the attendance records of those persons present at Royal Blackburn Hospital, HPB MDT meeting on 19th September 2014

A full copy of the attendance records of those persons present at Royal Blackburn Hospital, HPB MDT meeting on 3rd October 2014

A full copy of the email sent by Royal Blackburn Hospital HPB MDT Cancer Nurse Specialist, to Dr [redacted] (Ward consultant - C1), sent 3rd October 2014, regarding my father [redacted].

This is also to include a copy of the reply given."

5. Following intervention by the Commissioner the Trust responded on 18 April 2016. It refused to provide the majority of the requested information citing section 40(2) and 40(3) of the FOIA as its basis for doing so. However, it did provide a redacted copy of an email dated 3 October 2015.
6. Due to the time taken, and the fact that a decision notice was issued in order to illicit a response from the Trust, the Commissioner proceeded with his investigation without an internal review.

Scope of the case

7. The complainant initially contacted the Commissioner on 18 January 2016 as she had not received a response to her request. The Commissioner contacted the Trust on 21 January 2016 and asked it to provide a full response to the request within 20 working days.
8. The Trust did not respond and a decision notice was subsequently issued on 14 March 2016.
9. The Trust then responded to the complainant citing the exemptions as stated above.
10. The Commissioner considers the scope of this case to be to determine if the Trust has correctly applied the exemption it has cited.

Reasons for decision

Section 40(2) - third party personal data

11. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data?

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
13. The withheld information in this case comprises the names of the attendees of the meetings. The Commissioner is satisfied that the requested names relate to living individuals who may be identified from that data. The requested information therefore falls within the definition of personal data as set out in the DPA.

Would disclosure breach the Data Protection Principles?

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
15. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question which outweighs protecting the individual's right to privacy.

Reasonable expectations

16. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed.
17. The Commissioner has issued guidance about requests for personal data about public authority employees:
https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf
18. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job.
19. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so.
20. The Trust stated that the reasonable expectation of the individuals attending the meeting at the time and at the time of the request would be that only the patients being discussed at the MDT meeting and those NHS employees concerned in the provision of treatment to those patients would be aware or become aware of the identity of those attending the meetings as they would have a legitimate interest in decisions affecting the patients concerned.

Consequences of disclosure

21. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the individuals concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.
22. The Trust stated that it has made no assumptions or reliance on any adverse consequences that may flow from disclosure of particular individual's names. It has therefore not provided any arguments to support disclosure being unfair on this basis.
23. In its response of 18 April 2016, the Trust stated that:

"We are able to advise that the following classes of staff would have attended each of the meetings:

 - Consultant surgeons
 - Consultant physicians
 - Consultant radiologists
 - Consultant histopathologists
 - Consultant cytopathologists
 - Consultant oncologists
 - Specialist nurses
 - Research nurses
 - Dieticians and administrative staff."
24. The Commissioner has reviewed the list of individuals attending the meetings and notes that the following categories do not appear to have been in attendance at these meetings: Consultant cytopathologists, research nurses or dieticians.
25. The Trust further explained that an MDT meeting is conducted by clinicians to review the investigations and treatments being undertaken by a particular set of patients. It considered that both the patients and

the medical staff are identifiable from the minutes of the meeting and the attendance list.

26. Whilst the Commissioner acknowledges that patients could be identified from the minutes of these meetings, he notes that the request is for *"a full copy of the attendance records"* and is not for the minutes themselves. Therefore he has not considered this argument in his deliberations.

Balancing the rights and freedoms of the individual with the legitimate interests in disclosure

27. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
28. Notwithstanding the staff members' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information (their names) if there is a more compelling public interest in disclosure.
29. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
30. The Commissioner notes that the complainant has a personal interest in knowing the names of the staff who were involved in the meetings in September/October 2014.
31. The Trust considered in this case that releasing the information requested would not be fair as there is a reasonable expectation that the information held by the Trust in relation to individuals attending meetings to discuss the care of patients on a regular basis would remain confidential.
32. The Trust further considered that there is no legitimate public interest in disclosure of this information. Information released under the provisions of the Freedom of Information Act is released to the public at large. There is no public interest in knowing the identity of individuals attending these particular meetings. The Trust considers this information is of a personal interest to the requester rather than a legitimate public interest.

33. The Commissioner accepts that there is a legitimate interest in overall transparency in the way a public authority such as the Trust conducts its business. However, there is no presumption that this should automatically take priority over personal privacy. The Commissioner judges each case on its merits.
34. In this case, the Commissioner notes that the information requested is in relation to the individuals' professional roles and does not involve information contained within personnel files.
35. However, he is not convinced that the specific information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data of the staff involved. The Commissioner accepts that section 40(2) of the FOIA is engaged and therefore the Trust has correctly withheld the information.

Other matters

36. The Commissioner considers that the Trust's mishandling of the request from the outset has exacerbated the situation. He further considers that the Trust could reasonably have been expected to deal with such matters using its own procedures and avoided the need for a request for information under the FOIA.
37. It is not unheard of for NHS organisations to provide complainants with the names of staff attending meetings and indeed, have arranged for complainants to meet with those staff to obtain a better understanding of what care and treatment was discussed and provided.
38. The Commissioner considers that the Trust may benefit from an overall review of how this case was dealt with.

Right of appeal

39. 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

40. 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.
41. 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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