

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2021

Public Authority: Northern Ireland Ambulance Service Health and Social Care Trust

Address: Site 30
Knockbracken Healthcare Park
Saintfield Road
Belfast
BT8 8SG

Decision (including any steps ordered)

1. The complainant has requested information about the religious/political affiliations of staff at 11 ambulance stations. Northern Ireland Ambulance Service Health and Social Care Trust (NIAS) refused to disclose the information, citing the exemption at section 40(2) (Personal information) of the FOIA. It argued that the number of post holders covered by the request was sufficiently low to enable individuals to be identified.
2. The Commissioner's decision is that section 40(2) was applied correctly. However, she found NIAS breached section 10 of the FOIA by exceeding the statutory time for compliance when responding to the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 20 February 2020, the complainant wrote to NIAS and requested information in the following terms:

"Under the remit of Freedom of Information Act 2000, can the NIAS Trust please provide me with the information requested below, and within the timescale as set out by the Act – i.e. 20 working days.

A Trust wide NIAS Internal Trawl for Station Supervisors was conducted over the summer of 2019. These Band 6 positions were 1-year temporary contracts and most of these positions were filled during October of 2019.

The area of operations that I seek statistics from is known as Eastern Division. This division comprises 2 separate areas of operations, namely (a) the Greater Belfast Division and (b) the South Eastern Division.

Ambulance stations within the Greater Belfast Division include... Ardoyne, Bridge End, Broadway and Purdysburn stations.

Ambulance stations within the South Eastern Division include... Ballynahinch, Bangor, Derriaghy, Downpatrick, Lisburn, Newcastle and Newtownards stations. This amounts to a total of 11 ambulance stations within NIAS Eastern Division.

Within these 11 stations, approximately 10 new positions for Temporary Station Supervisors were filled during October 2019.

In the interests of Equality, I would like the NIAS Trust to release some demographic information. The 2 main religious groups within Northern Ireland are (1) persons of a perceived Protestant/Unionist background, and (2) persons of a perceived Catholic/Nationalist¹ background.

I therefore request release of the following ...

A. A numerical or percentile breakdown of the current Temporary Station Supervisor appointees within NIAS Eastern Division, in terms of their perceived religious/political affiliation (broadly speaking, Protestant and Catholic denominations).

B. A numerical or percentile breakdown of the perceived religious/political affiliation of the NIAS 'Field' or Operational Managers within this same area of operations. In operational managers, I specifically refer to Station Officers and Area Managers within the combined NIAS Eastern Divisional area of operations."

¹ The original wording employed here was "Catholic/Unionist", however, the complainant corrected himself in a follow-up email to NIAS later that day.

5. NIAS responded on 2 June 2020. It confirmed that it held the requested information and that it was exempt from disclosure under section 40(2) of the FOIA.
6. Following an internal review, NIAS wrote to the complainant on 31 July 2020, maintaining its application of section 40(2) of the FOIA. It said:

"In both staffing groups there are low numbers of personnel, that would then be sub-categorised into demographic groups. This is why the exemption was applied ie low staff numbers along with the demographic groups could lead to staff being identified."

Scope of the case

7. The complainant contacted the Commissioner on 28 May 2020 to complain about the way his request for information had been handled. He disagreed with the application of section 40(2) of the FOIA to refuse the request, believing that the information he had requested would not be capable of identifying any individuals.
8. The analysis below considers whether NIAS was entitled rely on section 40(2) of the FOIA to refuse to disclose the requested information, and its compliance with section 10 (time for compliance) of the FOIA.

Reasons for decision

Section 40 - personal information

9. Section 40(2) of the 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)². 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 General Data Protection Regulation ('GDPR').

² As amended by Schedule 19 Paragraph 58(3) DPA.

11. 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 the FOIA cannot apply.
12. 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 DP principles.

Is the 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. 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.
16. 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.
17. The request asks for a breakdown of the religious/political affiliations (broadly speaking, the percentage who identify as Protestant/Unionist and the percentage who identify as Catholic/Nationalist) of certain staff within NIAS's Eastern Division. Fair Employment and Equal Opportunities legislation in Northern Ireland places a requirement on NIAS to collect this information³.
18. The withheld information clearly *relates to* the individuals who were appointed to the posts the complainant is enquiring about. The second part of the test is whether the withheld information *identifies* any individual.

³ <https://www.equalityni.org/Employers-Service-Providers/Large-Business/Registration-and-monitoring/Monitoring>

19. On this point, the Commissioner's guidance on section 40⁴ states:

"The DPA defines personal data as any information relating to an identified or identifiable living individual. If an individual cannot be directly identified from the information, it may still be possible to identify them".

20. The withheld information in this case doesn't directly identify individuals. However, just because the name of an individual is not stated does not mean that they cannot be identified. The Commissioner's guidance on what is personal data⁵ states:

"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."

21. The guidance 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."

22. In considering whether an individual could be identified from apparently anonymised information, a test used by both the Commissioner and the First-tier Tribunal is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so.

⁴ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

⁵ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

23. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of re-identification of an individual from information which, on the face of it, appears truly anonymised. The term 're-identification' describes the process of turning anonymised data back into personal data through the use of data matching or similar techniques.
24. NIAS said that the number of staff falling within the scope of parts A and B of the request was very low (less than 10 in each case). As disclosure under the FOIA is to the public, NIAS considered this to include members of staff and colleagues of the successful appointees. NIAS considered that a motivated intruder could be a staff member or a colleague of the successful appointees. It believed that the low numbers meant that the information, although seemingly anonymised, would nevertheless render particular individuals identifiable to the complainant (a member of the ambulance service), and to their colleagues within the ambulance service, because of information they have access to through their job. As a further example, were there two appointees in a particular category then an appointee who was one of those two might be able to ascertain who the other one was.
25. NIAS explained that when jobs are advertised, the names of the successful appointees are placed on staff noticeboards and circulated amongst staff, and so it is likely that the identities of many of the successful candidates will be widely known. However, any information about their religious and political affiliations was regarded as having been supplied to NIAS in confidence and was not made public when appointments were announced.
26. NIAS said that the withheld information could be combined with this specific knowledge and augmented with other information in the public domain to deduce the religious/political affiliations of successful appointees:

"In relation to cross-referencing the information "with information in the public domain or otherwise" we can advise that staffs perceived religious/political affiliation can be identified, for example through:

- NI Funeral Times and if a staff member or family member has died the Church name can be stated and in Northern Ireland we have for example, Methodist, Presbyterian, Church of Ireland, Roman Catholic and Catholic Churches. This may identify perceived religious/political affiliation;

- Facebook or other social media posts by staff that identify themselves as working in the Ambulance Service and may publish

photos or words that can relate to Holidays and Festivals in Northern Ireland for example, the 12th July, St Patricks Day and may show Union Jacks or Tricolour flags. This may identify perceived religious/political affiliation;

- Facebook or other social media posts by staff that identify themselves as working in the Ambulance Service and may publish photos or words that relates to sporting activities such as hurling, hockey, football, Gaelic Athletic Association (GAA) for example, Celtic or Rangers football team, Portaferry GAC is a GAA Club and Senior Hurling Team. This may identify perceived religious/political affiliation".

27. NIAS also said that it is sometimes possible to infer someone's religious background from their name and that this, when combined with knowledge of the percentage breakdown, could allow someone to deduce with reasonable certainty, the religious/political affiliations of particular members of staff.
28. The Commissioner notes that the withheld information relates to a small population (emergency responders) which is well connected (due to the nature of working relationships throughout the organisation), rather than to a wider population. She accepts that employees of the ambulance service will have access to particular knowledge and information about their colleagues (including to the additional information NIAS says would link the withheld information to particular individuals) which will not necessarily be known by the wider public. When considering this, she has had regard to the Tribunal's comments in *Marshallsay vs Information Commissioner and Barts Health NHS Trust EA/2019/0338*, that where re-identification was achieved using information which might not be available to the wider public, the information was still personal data.
29. Broadly, for each part of the request, NIAS was being asked to disclose the percentage of appointees who identify as:
 - Protestant;
 - Catholic;
 - Unionist; and
 - Nationalist.
30. The Commissioner has viewed the withheld information. She is satisfied that the percentage breakdown could be combined with other information in the public domain, and with a motivated intruder's pool of knowledge, and result in information about specific individuals' religious and political affiliations being formally confirmed under the FOIA. The

Commissioner has seen nothing to suggest that the complainant wishes to use the information in this way – indeed, she accepts that the focus of his interest is on knowing the ratio of staff members with one religious/political affiliation to another. Nevertheless, disclosure under the FOIA is treated as a disclosure to the world at large, and once made it cannot be rescinded. The potential exists for other people to cross reference the information in this way, and in so doing, to have disclosed to them under the FOIA, information about an individual's political and religious affiliations.

31. The ICO's Code of Practice on Anonymisation⁶ notes that:

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".

32. The Commissioner notes that information about employees' Community Background (whether an individual is from the Protestant community or the Roman Catholic community in Northern Ireland, or neither) is collected by employers in Northern Ireland. She therefore accepts that this is information which will be of particular interest to those members of the public with an interest in equality of opportunity.

33. The Commissioner's view in this case is that the low number of individuals falling within the original cohort, and their subsequent sub-categorisation into even smaller numbers, increases the possibility of re-identification occurring when the withheld information is combined with other information. As the Commissioner has identified that there is general interest in information on equality matters, she considers the risk of re-identification occurring in this case to be reasonably likely. As set out above, the Commissioner's guidance states that if the risk of identification is 'reasonably likely' the information should be regarded as personal data.

34. Having considered the withheld information and the motivated intruder test, the Commissioner is satisfied that the withheld information both relates to and identifies the individuals described in the request. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

⁶ <https://ico.org.uk/media/fororganisations/documents/1061/anonymisation-code.pdf>

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

Would disclosure contravene principle (a)?

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

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

38. 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.
39. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
40. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Is the information special category data?

41. Information relating to special category data is given special status in the GDPR.
42. Article 9 of the GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
43. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does include special category data. She has reached this conclusion on the basis that it is information on the religious and political affiliations of the people specified in the request.
44. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
45. The Commissioner considers that the only conditions that could be relevant to a disclosure under the FOIA are conditions (a) (explicit

consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.

46. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
47. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

Section 1 – general right of access
Section 10 - time for compliance

48. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
49. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
50. The complainant submitted the request to NIAS on 20 February 2020, and it responded to the request on 2 June 2020, 69 working days later.
51. Therefore, by failing to disclose information which it held within 20 working days of receiving a request for it, NIAS breached sections 1(1) and 10(1) of the FOIA.
52. The Commissioner uses intelligence gathered from individual cases to inform our insight and compliance function. This aligns with the goal in our draft "Openness by design"⁷ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our "Regulatory Action Policy"⁸.

⁷ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁸ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

53. The Commissioner also wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

54. 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

55. 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.
56. 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 Bracegirdle
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