

## FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

### DECISION NOTICE

Dated 15<sup>th</sup> March 2006

**Name of Public Authority:** Southend-on-Sea  
NHS Primary Care Trust

**Address of Public Authority:** Harcourt House  
Harcourt Avenue  
Southend-on-Sea  
Essex  
SS2 6HE

#### **Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint from the complainant stating that on 6 January 2005 he requested the following information from the Southend-on-Sea NHS Primary Care Trust ("the PCT") under section 1 of the Freedom of Information Act 2000 (the "Act"):

- Discussions regarding funding promised and given to ex-partners at (*address of practice*) esp. with regard to the premises, changes and verbal agreements made with the PCT
- All communications regarding the practice and himself;
- Copies of all PCT minutes
- Copies of the last three years annual accounts
- Copies of all letters sent by the PCT to the Department of Health, Local Medical Committee, and General Medical Council regarding himself
- Medical reports requested by the PCT

The complainant provided a copy of his request for information and of a response received from the Deputy CEO of the Trust on 27 January. This dealt with a number of matters not directly connected with the request for information under the Act and also matters under the Data Protection Act 1998. It concluded that the request was being "dealt with in accordance with the provisions of these Acts and that you can expect to receive a response from the PCT in due course."

## **The Commissioner's investigation**

The Commissioner understands from information provided to him by the complainant and the PCT that the background to the complaint is a long running dispute between the complainant and the Trust, in the course of which the complainant has had occasion to ask for specific information and to raise other matters of concern.

Correspondence and other contact between the complainant and the PCT continued. This concerned both the request for information submitted on 6 January and the wider matters at issue between the two parties.

The Commissioner sought clarification from both the complainant and the PCT as to the requests made and the responses provided.

### Information provided by the PCT

On 10 May 2005, the Commissioner was provided by the PCT with a copy of a letter delivered on the same date to the complainant. This listed 9 items of information enclosed with the letter. These items included information about the premises occupied by the medical practice of which the complainant had been a member, copies of "some additional correspondence" regarding the partnership split, an extract from the confidential minutes of a PCT meeting at which the complainant's case was discussed and a copy of the PCT's register of interests.

The letter also confirmed that various other items of information had previously been provided to the complainant (notes regarding the possible relocation of the medical practice, information regarding the standard remuneration of GPs, the complainant's practice files), explained that certain other items requested were not held by the PCT (a fire inspection report, information relating to the funding of a training course) and that other information would be provided in due course (the outcome of an investigation into financial matters arising out of the management of the former medical practice.)

The letter also explained the basis upon which certain items of information requested had been withheld, Various exemptions contained in Part 2 of the Act were cited, including information which consists of personal data, information received in confidence, information protected by legal professional privilege and information relating to an investigation.

Attached to the letter was a schedule of the requests for information received from the complainant since 6 January including dates of requests, summaries and the responses given.

Information provided by complainant

The Commissioner received a holding response from the complainant on 20 May and a further letter dated 16 June 2005. This took the form of a copy of a lengthy letter to the PCT, dealing in the main with the wider issues between the parties.

On Page 40 of this letter, the complainant lists the items of information which he considers to have been withheld. There are:

- a) copies of contracts of staff employed at former medical practice, withheld on grounds of third party confidentiality
- b) legal advice obtained by PCT in respect to Cluny Square management
- c) information as to the outcome of an investigation into the conduct of another medical professional, withheld initially on the grounds that the information was held for the purposes of an investigation, now on the grounds of confidentiality
- d) Other information regarding the same medical professional

The letter went on to itemise further items of information now requested and to list further items information either which the complainant either considered had not been supplied or in respect of which he had further questions.

In reaching his decision, the Commissioner has considered the original request submitted by the complainant on 6 January 2005 and the information which the complainant stated in his letter of 16 June 2005 had been withheld. The Commissioner has not considered any further requests for information referred to by either the complainant or the PCT.

**The Commissioner's Decision**

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the PCT.

The Commissioner's decision is as follows:

1. The Commissioner is satisfied that the letter of 6 January from the complainant to the PCT constituted a request under section 1 of the Act.
2. The Commissioner is not satisfied that the PCT's response to the request was in accordance with section 10 of the Act. This requires that a public authority

shall provide a prompt response to requests for information or that, in any event, it does so within 20 working days. Although the precise dates upon which the information requested by the complainant are not clear from the correspondence, it is evident that not all was released with 20 working days. The schedule provided by the PCT to the Commissioner detailing the information provided to the complainant and the dates indicates that the earliest date information was provided in response to a request under the Act was 23 February 2005, some 34 working days after the date of the original request.

3. Section 17 of the Act requires that where a public authority refuses a request for information it must provide the applicant with a refusal notice, explaining, among other things any exemptions which have been relied upon and the reasons why those exemptions apply, if that is not obvious, and details of any arrangements for internal review of the decision to refuse. The Commissioner is satisfied that the letter of 10 May 2005 to the complainant broadly meets the requirements of s.17. Although no internal review of the partial refusal of the requests submitted by the complainant is offered, since the matter was already under consideration by the Commissioner, internal review would not necessarily have been appropriate, given the initial delay referred to above. Nevertheless, an internal review should still have been offered.
4. Of the six separate items of information which formed the complainant's original request, with one exception, the Commissioner is satisfied by the account given by the PCT, namely that the information was provided on various dates between 23 February 2005 and 10 May 2005. The Commissioner notes that in the letter from the complainant dated 16 June 2005, it is not asserted that this information has been withheld.
5. The exception is the request for "copies of all PCT minutes, which are referred to neither by the PCT nor the complainant in the letters of 10 May 2005 and 16 June 2005
6. So far as the other information stated by the complainant to have been withheld, the Commissioner is satisfied, with one exception, that the PCT can properly rely upon the exemptions cited in its letter of 10 May 2005 to the complainant. The Commissioner accepts that legal advice obtained by PCT may be withheld on the ground of the exemption relating to legal professional privilege. This is set out in section 42 of the Act which provides:

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

Although this is a qualified exemption, the Commissioner does not believe that the likely adverse affect on the willingness of either this or other

authorities to seek legal advice in the future is outweighed by any public interest in the disclosure of the advice obtained to the complainant.

7. Likewise, the Commissioner accepts that detailed information which the complainant has requested concerning the investigation of the conduct of another medical professional may be legitimately withheld on the grounds that disclosure might lead to an actionable breach of confidence. This exemption is set out in section 41 of the Act which provides:

“Information is exempt information if

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

8. The complainant also requested copies of the contracts of staff working at a medical practice. These were refused on the grounds of confidentiality. The authority states that “The PCT considers that there is an expectation that the detailed terms and conditions of a contract of employment will normally remain confidential between the employer and the employee.” The Commissioner accepts that there is likely to be some detailed information, particular to individual employees, that is exempt by virtue of section 41 because its disclosure would give rise to an actionable breach of confidence or by virtue of section 40, because its disclosure would breach the Data Protection Act. The relevant provision is as follows:

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles”

However, it is also likely that there are certain standard elements in the contracts which simply reflect the authorities employment practices and that these could be disclosed.

9. In summary, the Commissioner considers that the PCT has failed to meet a number of the procedural requirements of the Act. In particular it did not

provide a timely response to the request for information. Although in the main, the authority's reliance upon exemptions from disclosure of some information was justified, in two cases, the Commissioner considers that more information should have been released.

### **Action Required**

The PCT must either provide the complainant with copies of the minutes of any PCT meetings which it has not already supplied or should explain to the complainant where those minutes are otherwise available. In the event that those minutes contain exempt information and the public interest justifies the maintenance of the exemption, the PCT must issue a separate refusal notice in relation to the redacted passages, specifying the relevant exemptions and explaining its reasons for reliance upon them, and indicating whether internal review of the decision to refuse is offered.

The PCT must provide copies of the contracts of employment referred to in the complainant's letter to it of 10 June 2005. The authority may, however, remove any detailed information relating to particular individuals as indicated in paragraph 8 above.

These steps must be carried out by 18 April 2006.

## Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 277
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 15<sup>th</sup> day of March 2006

Signed: .....

Graham Smith  
Deputy Commissioner

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF