



## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Dated 31 May 2006**

**Public Authority: West Yorkshire Metropolitan Ambulance Service**

**Address: Trust Headquarters  
Springhill  
Brindley Way  
Wakefield 41 Business Park  
Wakefield  
WF2 0XQ**

### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1). The Commissioner therefore requires the Public Authority to release to the Complainant within the next thirty days the information requested in accordance with the decision set out in this notice.**

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
  - 1.2 Where a complainant has made an application for a decision, unless:
    - a complainant has failed to exhaust a local complaints procedure, or
    - the application is frivolous or vexatious, or
    - the application has been subject to undue delay, or
    - the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The Complainant has advised that on 10 January 2005, and in a further letter dated 8 February 2005, the following information was requested from the Public Authority in accordance with section 1 of the Act.

- 2.2 *“a copy of the final report of an investigation carried out by West Yorkshire Metropolitan Ambulance Service (“WYMAS”) into the handling of a grievance procedure; the nature of any legal claims WYMAS had had to settle with employees over the previous two years and how much the claims had been for, and the total cost during the current financial year (2004-05) of claims settled with employees.”*

It is alleged that WYMAS, in withholding this information, incorrectly applied sections 21 (Information accessible to complainant by other means), 38 (Health and safety), 40 (Personal information) and 41 (Information provided in confidence) of the Act to the first of these requests and sections 41 and 42 (Legal professional privilege) of the Act to the other requests.

## **3. Relevant Statutory Obligations under the Act**

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

## **4. Review of the case**

The complainant requested the Commissioner to consider whether or not the information that he sought had been correctly refused under section 1(1) of the Act. In the course of his investigation the Commissioner sought comments from WYMAS and examined relevant documentation.

## **5. The Commissioner’s Decision**

- 5.1 The Commissioner’s decision in this matter is that the Public Authority has not dealt with the Complainant’s request in accordance with the following requirements of Part I of the Act:

**Section 1(1)** – in that it failed to release to the Complainant information either not covered by any of the absolute exemptions cited or information to which, in relation to the qualified exemptions cited, he should have had an entitlement following the application of the public interest test.

5.2 In relation to the refusal to release the report WYMAS cited sections 21, 38, 40 and 41.

Section 21(1) of the Act states that:

*“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”*

It is the Commissioner’s view that this section, which is an absolute exemption, does not apply. The Public Authority have not published the report. While recognizing that the Complainant holds a copy of it, the Commissioner notes that this is without the consent of WYMAS and is of the view that the report could not be described as reasonably accessible when WYMAS have in fact refused access to it and continue to do so.

5.3 Section 38 of the Act states that:

*“(1) Information is exempt information if its disclosure under this Act would, or would be likely to-*

*(a) endanger the physical or mental health of any individual, or*

*(b) endanger the safety of any individual*

WYMAS have cited this section because they believe that the release of any additional information about this matter could affect the mental health of the individual whose original grievance started the chain of events that led to the production of the report. The Commissioner is of the view that the disclosure of information relating to living individuals is more appropriately dealt with under section 40 of the Act. The Commissioner has however noted that the location and area of the ambulance station at which the alleged events leading to the grievance took place have not entered the public domain. He is of the view that the release of that information could endanger the mental health of the individuals principally involved in this matter and that the exemption therefore applies.

Section 38 is a qualified exemption and the public interest test therefore needs to be considered. The Commissioner has noted that WYMAS did not consider the public interest test when citing this exemption. This amounts to a failure to comply with the requirements of the legislation. The Commissioner is of the view that the public interest in this matter lies more in the way in which WYMAS handled the grievance than in the circumstances of the grievance itself. His decision therefore is that any public interest in the disclosure of the specific information relating to the location and area of the ambulance station is outweighed by the public interest in

maintaining the exemption, given his assessment of the potential risk to the health and safety of the individuals concerned if this information were to be disclosed.

5.4 Section 40 of the Act states that:

*“(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 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, or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and.....*

WYMAS have argued that the report contains personal data emerging from, and forming an integral part of, a grievance process. The Commissioner accepts that argument. However, the Commissioner notes that in November 2004, following the removal on public interest grounds of an injunction preventing publication, the substance of the draft report and significant detail from it, were published in the Yorkshire Post: similar articles appeared in April 2005 in relation to the final report. Those articles released into the public domain the names of many of the individuals involved in this matter, and included comments made by them in interviews.

The Commissioner is of the view that those individuals were named in the report purely in respect of their official positions and that the principal function of section 40 is to protect personal data relating to private lives rather than public ones. It is his view that the release of those names is covered by condition 6 of Schedule 2 of the Data Processing Act 1998 (the “1998 Act”). This condition states that:

*“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subjects..”*

The Commissioner does not believe disclosure of data falling within this section has caused, or would cause, any such prejudice in this case. The Commissioner does however recognize that the report contains considerable personal information relating to the two individuals involved in the original allegation leading to the grievance procedure. He notes that the newspaper articles in which information from the two versions of the report was released did not disclose the identities of

these individuals, although the articles did report the nature of the allegation. He notes that the Complainant has said that he would continue to respect the privacy of those individuals. The Commissioner is of the view that none of the conditions in Schedules 2 and 3 of the 1998 Act that would allow for fair and lawful processing have been met in relation to that personal data and that the identities of those individuals, and any data that could help to identify them, should therefore remain withheld. This view also extends to the withholding of any reference there might be in the report or appendices which incorporates personal data about any other employee in respect of private matters.

5.5 Section 41 of the Act states that:

*“(1) 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.”*

Section 41 is an absolute exemption.

In order for section 41 to apply, the information at issue needs to have been obtained from an external source. No duty of confidence can apply to information that has been provided by employees in the course of, and relating to, their official duties. It is the Commissioner's view in this case that the information contained in the report falls within that definition. No duty of confidence applies to that information and the exemption is therefore not engaged.

5.6 In reference to the claims, WYMAS cited sections 41 and 42. It is noted that WYMAS did, on receipt of the first request dated 10 January 2005, release to the Complainant information relating to the number of claims received by the authority during the relevant period. Subsequently, WYMAS informed the Commissioner that this figure needed amendment as details of other claims against them had emerged. WYMAS have not so far released that revised figure to the Complainant. When informing the Commissioner of the revised figure WYMAS indicated a willingness to release the information sought by the Complainant if it could be presented covering a longer timescale. The Commissioner advised WYMAS to contact the Complainant to see if he would be content to have the information presented on that basis but this action was not taken.

5.7 WYMAS cited Section 41 in relation to the information sought about the claims (see above). Section 41 is an absolute exemption and involves no public interest test. The argument put forward by WYMAS is that releasing further details of the awards would lead to the identification of individuals and thus be a breach of confidence. However, for this exemption to be engaged the information needs to have been provided in confidence by an external source or, in respect of an employee, by the employees themselves in relation to matters concerning them in a private capacity. In this case employees will certainly have provided to WYMAS information relating

to the state of their physical and mental health but, because the provision of that information was directly related to the pursuit of legal action against WYMAS as a result of injuries sustained in the capacity of employees, section 41 is not applicable.

5.8 WYMAS also cited, at review stage only, section 42. Section 42 states that:

*“(1) 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.”*

WYMAS cited this exemption on the basis that the agreements they reached with those making claims were the direct outcome of legal action and were negotiated by solicitors: section 42 should therefore apply to any information relating to those claims. The Commissioner does not believe that this is a correct reading of section 42. The purpose of section 42 is to protect the lawyer/client relationship, in particular the provision of advice either in general terms or in relation to litigation. That information has not been sought here: what has been sought here is information relating to the outcomes of legal processes. The Commissioner is of the view that section 42 has been misapplied. Furthermore the Commissioner notes that, although this is a qualified exemption, WYMAS provided no argument of substance in respect of the public interest test in relation to this exemption. The Commissioner is of the view that the section 42 exemption is not engaged in this case.

5.9 The Commissioner notes that WYMAS did not cite section 40 in respect of this information. However, details of the amount of any particular settlement would clearly constitute personal data (and the Commissioner has noted that the settlement reached in the case that formed the subject of the report has been described as - ‘Strictly confidential’) In addition, information about physical or mental health constitutes sensitive personal data as defined in Schedule 3 of the 1998 Act and it is unlikely that the processing of any of that data, in the absence of consent, would constitute fair and lawful processing. The Complainant has specified that he does not wish individuals to be identifiable as a result of the release of any of this information. The Commissioner is of the view that none of this information should be released in any way that enables individual claims and, potentially, claimants to be identified.

## **6. Action Required.**

6.1 The Commissioner requires the Public Authority to release to the Complainant within thirty days from the date of this Notice a copy of the final report which has had the following information either anonymised or redacted: the names of the two individuals involved in the original grievance and the name, and the area in which it is situated, of the ambulance station at which those individuals were working at the time of the alleged incidents. The Commissioner also requires either the anonymisation or redaction any other information which could lead to the identification of those two individuals.

6.2 In the respect of the claims, the Commissioner requires the Public Authority to release to the Complainant: the nature of the claims filed against them by employees in the period specified, the amounts of those claims, and the total cost of those claims in the financial year 2004-05. This information is to be provided in a way that ensures that the individuals involved in these claims cannot be identified. The Commissioner also requires that the revised figure for the number of cases in 2004-05 be released to the complainant.

**7. Right of Appeal**

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

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 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 31<sup>st</sup> day of May 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**