



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 10 April 2006

Public Authority: Bristol North Primary Care Trust

Address: King Square House
King Square
Bristol
BS2 8EE

Summary Decision and Action Required

The Commissioner's decision in this matter is that Bristol North Primary Care Trust (the "PCT") has dealt with the complainants' request in accordance with the requirements of Part I of the Act.

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 complainants' request for information made to the PCT 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- the application has been withdrawn or abandoned,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 On 5 January 2005 the following information was requested via email from the PCT in accordance with section 1 of the Act.

"All material including a copy of the CCTV footage relating to an incident which took place in hospital car park number 2 ("the car park")."

The information request was subsequently limited to see only the CCTV footage of the incident, which is the alleged vandalism of the complainants' car. This car was parked in hospital car park number 2.

2.2 In a letter dated 17 February 2005, the PCT stated that the information requested contained personal information relating to a third party individual. In view of this, the PCT refused the complainants access to the information under section 40 of the Act.

2.3 The complainants asked the PCT to review this decision in an email dated 18 February 2005. The PCT carried out the review and reported the decision to maintain the section 40 exemption in a letter dated 2 March 2005.

2.4 Subsequently, the complainants applied to the Information Commissioner on 6 March 2005 for a decision as to whether the PCT's decision to withhold the information was in accordance with the requirements of Part I of the Act.

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."

This right is subject to Section 2 of the Act which provides for exemptions to the rights created by Section 1.

Section 10(1) provides that –

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

4. Review of the case

The complainants asked the Commissioner to investigate the PCT's decision to withhold the CCTV footage on the grounds that it contained information identifying individuals. Accordingly, the application of the section 40 exemption was examined. As part of his investigation, the Commissioner also considered whether any other exemptions were appropriate.

The Commissioner requested a copy of the CCTV footage in question and carefully reviewed it to determine whether the footage is exempt from disclosure under the Act. The footage in question consists of images from four cameras spliced into one continuous tape. Two of the cameras overlook car parks, while the remaining two record images of street scenes. As part of the review, the Commissioner investigated the nature and purpose of the CCTV cameras and how the data collected by the cameras is processed by the PCT. This is discussed in more detail below.

5. The Commissioner's Decision

In reaching his decision, the Commissioner has looked closely at the arguments put forward by both the PCT and the complainants.

Section 40 exemption (personal information)

Section 40 states:

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*
- (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, or*
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection*

principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

As part of the review of this exemption, the Commissioner has taken into account the Data Protection Principles (the "Principles") listed in Schedule 1 of the Data Protection Act 1998 (the "DPA"). The most relevant of these to this case is the First Principle, which states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- a) at least one of the conditions in Schedule 2 is met, and*
- b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

The Commissioner has considered whether the footage constitutes personal data and, if so, whether its release would breach any of the Principles.

The Commissioner has reviewed sections of the footage and concluded that the requested information does constitute personal data, because it contains images constituting information relating to identifiable natural persons. It therefore falls within the scope of the exemption provided by section 40. From a review of the tape, it appears that the footage does not show the attack on the complainants' car.

Nature and purpose of CCTV cameras

The four CCTV cameras (the "cameras"), which were installed to act as a deterrent to crime, capture images from two hospital car parks and two nearby streets. All of the areas covered by the cameras are areas to which members of the general public have access in order to visit the hospital.

The cameras which recorded the footage are fixed and cannot be manipulated remotely. It is also impossible to manipulate the picture, for example by zooming in or out. In other words, the cameras record a general view of the car parks and streets and the events that occur there. The information requested is limited to the CCTV footage obtained by the camera in hospital car park no. 2 and the Commissioner has therefore focused the investigation on these images.

Although the picture is a general view of the car park, the PCT has submitted that it is usually possible for individuals to be identified from the pictures. The Commissioner has studied sections of the footage and is satisfied that the camera captures images relating to identifiable natural persons. The Commissioner is therefore satisfied that the footage is 'personal data' for the purposes of the DPA.

The CCTV footage is stored on video cassettes by the PCT and is only viewed following an incident in the car park. At this point, it would normally be viewed by a limited

number of people. These are the police, who occasionally ask to view the tapes following an incident, the Facilities Manager of the hospital in question and some staff within the Facilities Department. In this case, the footage was viewed by the police as part of their investigation into the alleged criminal damage to the car. However, this investigation was concluded at an early stage with no action being taken.

Whether disclosure would breach the Data Protection Principles

The Commissioner has considered whether release of the information requested would breach any of the Principles and has decided that the First Principle would be breached. It would neither be fair nor lawful to allow release of this CCTV footage to the complainants or to the general public.

In the Commissioner's view, the capturing of images of people through the use of CCTV cameras can amount to an infringement of personal privacy. In view of this, it is essential for individuals who find themselves the subject of CCTV pictures to be protected against the improper processing (including disclosure) of these images. The Data Protection Principles provide this protection by both limiting the processing of such data to specific purposes and by ensuring that disclosure of personal data contained in CCTV footage is appropriately restricted.

The CCTV cameras cover two car parks and two streets and therefore capture the images of anyone who uses these areas. While the pictures would be unlikely to reveal the precise reason why any individual was in the car park / street, they would identify the individual captured by the CCTV camera as well as recording the fact that they are at a particular place at a particular time. In view of this, the privacy rights of individuals whose images appear in the footage would be compromised by disclosure of the requested information.

There is general acceptance on the part of the public that images of them will be captured by CCTV cameras, particularly in places such as public car parks where CCTV monitoring routinely takes place. The public generally accepts the use of CCTV footage because of the legal restrictions and safeguards in place concerning the subsequent use and disclosure of the images captured. For example, the public might expect relevant footage only to be disclosed to an organisation with responsibility for investigating a crime, but not for less pressing reasons.

The public generally tolerates the limited use and disclosure of CCTV images for limited purposes such as maintaining law and order. Allowing a general right of access to this footage would be contrary to the expectations of those whose images have been captured and therefore unfair. Further, in the Commissioner's view, were CCTV footage to be available to the public on-demand, this would be likely not only to undermine the intended use and purpose of the technology but also to adversely affect individuals' personal privacy. Article 8 of the European Convention on Human Rights ("ECHR"), the

right to respect for private and family life would therefore be engaged. Article 8 ECHR provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In this case, disclosure of the requested footage (whether to the complainants or the general public) would be an unnecessary and disproportionate interference by a public authority in individuals' private lives as it cannot be justified by any of the reasons provided for in Article 8(2) ECHR and, as such, would be incompatible with that right. Further, in the Commissioner's view, were the public allowed access to CCTV footage on demand by virtue of the Act this would erode personal privacy and undermine public confidence in the acceptable and responsible use of CCTV technology and the benefits such technology brings. As a result, release of this footage to the complainants or the general public would not only be unfair, but would also be unlawful as it would amount to a breach of section 6 of the Human Rights Act 1998, which provides that it is unlawful for a public authority (in this case the PCT) to act in a way which is incompatible with a Convention right (in this case Article 8 ECHR).

Some of the footage contained on the tape consists of images of parked cars (with no vehicle identification numbers visible) and empty street scenes. Such footage does not constitute personal data. The Commissioner has given some consideration as to whether it would be appropriate to redact the sections of tape which contain personal data and supply the remaining footage. However, redacting the images which do contain personal data would render the remainder of the tape meaningless.

Section 10(1) (time for compliance)

The complainants submitted the original information request under the Act on 5 January 2005. The PCT, in responding by letter on 17 February 2005, did not respond to the request within 20 working days. In view of this, the Commissioner considers that the PCT breached section 10 of the Act by providing this late response.

6. Action Required

In view of the Commissioner's decision that the PCT was entitled to rely upon section 40 to withhold the requested information he does not require any steps to be taken.

Although the PCT did not respond to the original information request within 20 working days, the Commissioner does not require any remedial steps in this matter. Instead, the Commissioner will be writing to the PCT to remind them of their obligations under the Act.

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 6000 877
Fax: 0116 249 4253
Email: 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 10th day of April 2006

Signed

**Graham Smith
Deputy Commissioner**

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