

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 March 2011

Public Authority: The Parliamentary and Health Service
Ombudsman
Address: Millbank Tower
Millbank
London
SW1P 4QP

Summary

The complainant requested, under the Freedom of Information Act 2000, all the relevant correspondence generated in respect of two complaints that she had submitted to the public authority. The public authority replied that some of the information requested amounted to her own personal data and was exempt by virtue of section 40(1) [first party personal data]. This information was then considered under the Data Protection Act 1998. The remainder of the information was withheld under section 44(1) [statutory bar].

The Commissioner has carefully considered this case. He has concluded that the information that was the personal data of the complainant was exempt by virtue of section 40(1). For the remainder, he has determined that the public authority was entitled to apply section 44(1) to some, but not all of information. The information that was withheld incorrectly has now been disclosed. The Commissioner has noted procedural breaches of sections 1(1)(b), 10(1) and 17(1), but requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant made two complaints for the public authority to consider. They concerned the Healthcare Commission and a NHS Trust.

The Request

3. On 19 February 2010 the complainant wrote to complain about the investigations conducted by the public authority. Within that letter she asked for the following information under the Act:

'I formally request copies of all correspondence, note of phone calls, emails and paperwork within and involving PHSO in regard to [reference numbers redacted] from the inception of my complaints in 2007.'

4. On 16 June 2010 the public authority issued its response. It provided some information, which it explained was the information that was material to its decisions in respect of her complaints. However, it explained that it was not willing to provide all the information that was sought. The complainant was advised that, whilst the public authority held the information requested, it considered that the remainder of this information came within the ambit of section 11(2) Parliamentary Commissioner Act 1967 and section 15 of the Health Service Commissioner Act 1993. It explained that it was therefore statute barred from disclosure under section 44 of the Act. This was because the information could only be released for the purposes of the investigation and for the purpose of making a report in respect to it. It then went on to consider its position under the Data Protection Act 1998 (the 'DPA').
5. On 14 July 2010 the complainant requested that an internal review was conducted.
6. On 8 September 2010 the public authority communicated the result of its internal review. It apologised for both the delays that the complainant had experienced and the confusion that related to the scope of the review that was to be conducted. It upheld its position in respect of the information access matters.

The Investigation

Scope of the case

7. On 4 May 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That no response had been issued to the request dated 19 February 2010;
 - That the process to check the integrity of files is inadequate because there was no process available for her to check investigation files; and
 - There is no forum to complain about the lack of a process to check investigation files because the public authority is not regulated.
8. On 21 June 2010 the complainant wrote to the Commissioner. She reiterated that she believed it was important for the Commissioner to look at this swiftly and said that the information that was provided was both incomplete and inadequate. The Commissioner advised her to seek an internal review.
9. On 13 September 2010 the complainant informed the Commissioner that she still required the relevant recorded information to be provided in full. The Commissioner has therefore considered the application of the exemptions to the withheld information.
10. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. The Commissioner has conducted an assessment under section 42 of the DPA into the public authority's compliance with that the DPA. This does not form part of this Decision Notice. This is because an assessment under section 42 of the DPA is a separate legal process from the consideration under section 50 of the Act. The complainant has received this assessment in a separate letter.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. For clarity, the Commissioner cannot adjudicate on the public authority's processes regarding how it handles complaints. All he can consider in this Notice is its compliance with the Act. The Act only applies to relevant information that is held in recorded form.

Chronology

12. On 6 September 2010 the Commissioner wrote to the complainant and the public authority to explain that he had received an eligible complaint. He asked the public authority to provide its arguments to explain why it is entitled to withhold the information in this case.
13. On 13 September 2010 the complainant telephoned and emailed the Commissioner to request that this case was prioritised.
14. On 29 September 2010 the Commissioner wrote to the complainant and the public authority with the result of his assessment made under section 42 of the DPA. He explained that the remaining issues under the Act had been passed to the relevant case officer to consider.
15. On 12 October 2010 the Commissioner received the public authority's submissions.
16. On 1 November 2010 the Commissioner called the public authority. He asked that it provide the complainant with some information he believed fell outside the scope of the statutory bar.
17. The public authority provided this information to the complainant on 4 November 2010. On 8 November 2010 the complainant explained that she had received this information and remained concerned about the public authority's performance. The public authority also identified further information that fell outside the scope of the statutory bar on 19 November 2010 and provided that information to the complainant on 23 November 2010.

Analysis

Exemptions

18. As a preliminary matter, it is important to note that any disclosure under the Act amounts to a disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that:

"Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions" (paragraph 52)

The decision is available online at the following link:

http://www.informationtribunal.gov.uk/Documents/decisions/guardian_news_HBrooke_v_infocomm.pdf.

Section 40(1)

19. As noted above, all the information that constitutes the complainant's own personal data has been considered by the Commissioner under the DPA. Section 40(1) provides an absolute exemption for this information under the Act and therefore the Commissioner supports its application to this information. The information that has been correctly withheld under section 40(1) consists of:
 1. The contact details and letter of complaint from the complainant; and
 2. Any correspondence with the complainant advising her of the public authority's actions in relation to the complaints that she made.
20. This information can be linked to the complainant, so is her own personal data and is exempt under section 40(1).

Section 44(1)(a)

21. The public authority refused to disclose the remaining information falling within the scope of the request under section 44(1)(a). Section 44(1)(a) provides an exemption from disclosure under the Act for information which is prohibited from disclosure under any law or enactment. It is an absolute exemption, so if the statutory bar applies then the information is exempt and no public interest test is necessary.
22. In its refusal notice, the public authority cited section 11(2) of the Parliamentary Commissioner Act 1967 and section 15 of the Health Service Commissioners Act 1993 as the relevant statutory prohibitions, which meant the relevant recorded information would not be released. In its submissions to the Commissioner, it explained that the only relevant statutory bar for this case is section 15 of the Health Service Commissioners Act 1993 and therefore the Commissioner will only consider this statutory bar.

23. The Commissioner will first detail the relevant parts of the legislation before moving on to consider its operation in this case.

The Health Service Commissioners Act 1993

24. Section 11(2) of the Health Service Commissioners Act explains that the public authority has a duty to conduct an investigation in private.
25. The Ombudsman has argued that the requirement for her investigations to be conducted in private would, or would be likely to be, undermined and jeopardised by the disclosure of the requested information to the whole world. Such disclosure of the information withheld could conceivably inhibit, or discourage, individuals from bringing their concerns to the attention of the Ombudsman or having confidence in engaging with her office as freely and frankly as possible. The Commissioner acknowledges that the privacy of an investigation is an important consideration when considering this statutory bar.
26. Section 15 of the Health Service Commissioners Act then discusses what information cannot be released by the public authority:

'(1) Information obtained by a Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed ...'

27. The Health Service Commissioners Act goes on to set out a number of exceptions to this provision. These are set out in full in the legal annex to this Notice.

The application of the statutory bar to the information requested

28. For it to be possible for the public authority to disclose information under the Act it is necessary for the information either:
 1. Not to have been *'obtained by the Commissioner or his officers in the course of or for the purposes of an investigation'* under the Health Service Commissioners Act 1993. If the information falls outside this group then the statutory bar would not be appropriately applied; or
 2. For it to fall within one of the exceptions found in section 15(1)(a) to (e) of the Health Service Commissioners Act 1993.

(1) *Was the withheld information 'obtained by the Commissioner or his officers in the course of or for the purposes of an investigation'?*

29. The first issue to be considered by the Commissioner, therefore, is whether the information requested by the complainant and withheld by the Ombudsman under section 44 of the Act, can be said to have been obtained by the Ombudsman in the course of, or for the purpose of, an investigation under the Health Service Commissioners Act 1993.

30. Section 3 of the Health Service Commissioners Act 1993 sets out the matters subject to 'investigation'. These matters include a complaint made to a Commissioner by or on behalf of a person that he sustained injustice or hardship through the failure in a service provided by a health care body, a failure of a body to provide a service, through maladministration or other miscellaneous complaints that aren't disallowed by that Act.

32. The withheld information can be usefully divided into four categories:

(i) Information that the public authority obtained from the bodies complained about;

(iii) The correspondence (including emails) between the bodies complained about and the public authority in relation to the substance of the complainant's complaint;

(iii) Information generated by the public authority setting out its consideration of the complainant's substantive complaints; and

(iv) Residual information held on file that does not make reference to the subject matter of the complaint nor was obtained for the purposes of the public authority's investigation.

33. The Commissioner considers that the words *'obtained by the Commissioner or his officers in the course of or for the purposes of an investigation'* should be given their natural meaning. *'Obtained'* refers both to information which the Ombudsman proactively obtains as part of her investigations and information supplied by those wishing the Ombudsman to carry out an investigation.

34. The Commissioner asked the public authority to provide the information in category (iv) to the complainant and it did so on 4 and 23 November 2010. The Commissioner believes that the exemption was inappropriately applied to this category of information because it does not consist of information that was embraced by section 15(1) of the Health Service Commissioners Act, ie it was not obtained for the

purpose of the Ombudsman's investigation. The failure to disclose this information meant there were a number of procedural breaches that will be considered by the Commissioner in the procedural requirements section below.

35. The information in respect to categories (i) and (ii) were clearly 'obtained' by the Ombudsman for the purposes of her investigations. The information was generated during the investigation to enable the public authority to consider the complainant's complaint within an investigation. As this is so, the category one and two information is held for the correct purposes for the statutory bar to apply.
36. The Commissioner has considered the category (iii) information. He has been satisfied that the analysis of the complainant's complaints relies entirely on the information gained from the complainant and the other parties. The reason why the information was obtained was to conduct the investigation. The Commissioner is satisfied that it would not be possible to remove the information that was obtained in the course or for the purpose of the investigation because it is permeates through all of the information held for this category.
37. The Commissioner has also considered the Information Tribunal's decision in *Commission for Local Administration in England v The Information Commissioner* [EA/2007/0087]¹, which was an appeal against the Commissioner's decision **FS50112347**². This case concerned the statutory prohibition contained in section 32(2) of the Local Government Act 1974, which is similar to the section 15 statute bar of the Health Service Commissioners Act 1993. From this decision, the Commissioner believes that it is important to note the following:
 1. There is a distinction between information that concerns the content of the complaint and information that relates to the process that was undertaken in investigating it – the first is definitely caught by the statutory bar while the second is unlikely to be (paragraph 10); and
 2. There is also a distinction between information that has been obtained from a third party and internally generated information – the first is definitely caught by the statutory bar while the second is unlikely to be (paragraph 11).
38. The Commissioner has considered the comments outlined above and notes that had it been possible to separate the purely internally

¹<http://www.informationtribunal.gov.uk/DBFiles/Decision/i66/Comm%20for%20Local%20Authority.pdf>

² <http://www.ico.gov.uk/~media/documents/decisionnotices/2007/FS50112347.ashx>

generated information from the information obtained during the investigation, then the purely internally generated information should have been disclosed. However, as noted above, he does not believe that it is possible to separate the information in this way. This follows his earlier decision is **FS50140862**³ which was upheld by the Tribunal in *Mr Colin Parker v the Information Commissioner and the Parliamentary and Health Service Ombudsman* [EA/2007/0046]⁴. He is satisfied therefore that this information was '*obtained by the Commissioner or his officers in the course of or for the purposes of an investigation*' allowed by section 3 of the Health Service Commissioners Act 1993.

39. The Commissioner is therefore satisfied that the information for the first three categories is the sort of information that the statutory bar prima facie covers.
40. However, this does not mean that the statutory bar necessarily applies. This is because there are exceptions to the statutory bar found in section 15(1)(a) to (e) of the Health Service Commissioners Act 1993. The Commissioner will therefore consider whether any of those exceptions apply in this case.
41. The Commissioner can discount sections 15(1)(b) to (d) because in this case the public authority is not releasing the information in these limited circumstances to achieve these purposes. These three sections are only relevant where a body that is charged with investigating those offences requests the information from the public authority.
42. The relevant sections that may be applicable are sections 15(1)(a) and 15(1)(e). Section 15(1)(a) allows the public authority to disclose information where it is both for the purposes of the public authority's investigation and for any report made in respect of it.
43. The public authority has explained that it had disclosed to the complainant under a separate regime some information that relates to how it came to its decision. It explained that this disclosure to the relevant parties is all the information that it believes it needs to disclose for the purposes of its investigation and to report its conclusions. The Commissioner recognises that section 15(1)(a) operates to provide the public authority with discretion to disclose information obtained in the course of or for the purposes of an investigation where it believes that it would be beneficial for the purposes of that investigation. The discretion remains with the public

³http://www.ico.gov.uk/~media/documents/decisionnotices/2007/DECISION_NOTICE_FS50140862.ashx

⁴ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i137/Parker.pdf>

authority and the Commissioner does not believe that it has exercised its discretion in a manner that is so unreasonable that no reasonable public authority would ever consider acting in this way⁵. The Commissioner believes that the discretion would have needed to be exercised in this way for him to be able to consider that this exception to the statutory bar to apply. As this is the case, the Commissioner believes that the exception found in section 15(a) cannot be relied on to enable the disclosure of the withheld information. This is in line with paragraph 27 of the Information Tribunal Decision EA/2007/0046 that stated:

'Disclosure of the remaining parts of the Transcripts, not included in the Report, would not be for the purposes of the investigation or report made in respect of the investigation. Such disclosure is therefore not permitted by section 15.'

44. The Commissioner has considered the complainant's arguments that the information is required for her to judge whether the Ombudsman has considered the integrity of the files correctly. The Commissioner views these concerns as being considered by the Information Tribunal in paragraph 28 of EA/2007/0046 where it stated:

'The question of whether the Transcripts may have been beneficial and whether the Appellant needs them better to understand the Report, are not relevant considerations in this appeal. They do not overcome the statutory bar on disclosure contained in section 15(1).'

45. Section 15(1)(e) also requires detailed consideration. It is important to note that section 15(1)(e) has been restricted by section 15(1)(b) which explains that disclosure can only be made to:

'to any persons to whom he thinks it should be disclosed in the interests of the health and safety of patients'.

46. The Commissioner has noted that the complainant's allegations about her mother's care are serious and if proven, may mean that the public authority would be entitled under section 15(1)(e) to contact relevant individuals to protect the health and safety of patients. However, the discretion once again lies with the public authority and the section was never envisaged to enable the public authority to communicate

⁵ *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223. The Information Tribunal also agreed with this approach in *EA/2009/0067 Broadcasting Entertainment Cinematograph Theatre Union (BECTU) v Information Commissioner and Ofcom*

information to the whole public. For these reasons, the Commissioner is satisfied that the exception under section 15(1)(e) cannot be relied on to enable the disclosure of the withheld information.

47. The Commissioner has also noted that the two investigations relevant to the request were concluded at the time of the request. The Information Tribunal has also considered what effect that this has on the operation of section 15(1) in paragraph 29 of EA/2007/0046 where it stated:

'There is nothing in section 15 which limits the restriction on disclosure only until the investigation for which the information was obtained, is concluded, or any report in respect of the investigation, is published.'

48. As all the information falls within the statutory bar and none of the exceptions to it apply in this case, the Commissioner has found that the public authority was entitled to rely on section 44(1) in respect to these three categories of information.
49. By virtue of section 2(3) of FOIA, the exemption in section 44(1) is absolute. The only issue the Commissioner can consider is whether disclosure of the withheld information was prohibited by or under the statutory bar.
50. As he is satisfied that the statutory bar applies, the public authority was entitled to withhold the information from the public and the Commissioner upholds its position.

Procedural Requirements

Section 1(1)(b)

51. Section 1(1)(b) requires that non-exempt recorded information is communicated to the complainant by the date of the internal review. The failure to communicate the category (iv) information until the Commissioner's involvement constitutes a breach of section 1(1)(b). There are no remedial steps required as the information was provided in course of the Commissioner's investigation.

Section 10(1)

52. Section 10(1) requires that sections 1(1)(a) and 1(1)(b) are complied with within twenty working days (except for limited exceptions that are not relevant to this case). The public authority failed to confirm it held

information or provide disclosable information in twenty working days and thus breached section 10(1).

Section 17(1)

53. Section 17(1) requires that a valid refusal notice is issued within the time of statutory compliance. The public authority failed to issue a refusal notice in time and therefore breached section 17(1).

The Decision

54. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It applied section 44(1) appropriately to the category (i), (ii) and (iii) withheld information and was entitled to withhold it; and*
 - *It applied section 40(1) appropriately to the information that was the complainant's own personal data and was entitled to withhold it under the Act.*
55. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It applied section 44(1) inappropriately to category (iv) withheld information;*
 - *It breached section 1(1)(b) because it failed to provide the category (iv) information by the time of its internal review; and*
 - *It breached sections 10(1) for complying with section 1(1)(a) and section 1(1)(b) late; and*
 - *It breached section 17(1) because it failed to issue its refusal notice in twenty working days.*

Steps Required

56. The Commissioner requires no steps to be taken. This is because the category (iv) information was provided to the complainant during the course of his investigation.

Right of Appeal

57. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

58. 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.
59. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 17th day of March 2011

Signed

**Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 1 (1) of the Act 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."

Section 10 of the Act provides that:

"Subject to subsections (2) and (3), 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."

Section 17 (1) of the Act states that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Section 44 of the Act provides that:

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court.”

Health Service Commissioners Act 1993

Section 3 provides that:

Matters subject to investigation

3. General remit of Commissioners

(1) On a complaint duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

- (a) a failure in a service provided by a health service body,
- (b) a failure of such a body to provide a service which it was a function of the body to provide, or
- (c) maladministration connected with any other action taken by or on behalf of such a body,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

(1YA) In the case of the Assembly the Health Service Commissioner for Wales may only conduct an investigation in respect of—

- (a) a failure in a service provided by the Assembly in the exercise of a function of the Assembly relating to the National Health Service (an “Assembly health service function”),
- (b) a failure of the Assembly to provide a service the provision of which is an Assembly health service function, or
- (c) maladministration connected with any other action taken by or on behalf of the Assembly in the exercise of an Assembly health service function.

(1ZA) Any failure or maladministration mentioned in subsection (1) may arise from action of—

- (a) the health service body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.

(1A) Where a family health service provider has undertaken to provide any family health services and a complaint is duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

(a) action taken by the family health service provider in connection with the services,

(b) action taken in connection with the services by a person employed by the family health service provider in respect of the services,

(c) action taken in connection with the services by a person acting on behalf of the family health service provider in respect of the services, or

(d) action taken in connection with the services by a person to whom the family health service provider has delegated any functions in respect of the services,

the Commissioner may, subject to the provisions of this Act, investigate the alleged action.

(1C) Where an independent provider has made an arrangement with a health service body or a family health service provider to provide a service (of whatever kind) and a complaint is duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

(a) a failure in the service provided by the independent provider,

(b) a failure of the independent provider to provide the service, or

(c) maladministration connected with any other action taken in relation to the service,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

(1D) Any failure or maladministration mentioned in subsection (1C) may arise from action of—

(a) the independent provider,

(b) a person employed by the provider,

(c) a person acting on behalf of the provider, or

(d) a person to whom the provider has delegated any functions.

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, a Commissioner shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to a Commissioner shall be determined by him.

(4) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a health service body in the exercise of a discretion vested in that body.

(5) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by—

(a) a family health service provider,

(b) a person employed by a family health service provider,

(c) a person acting on behalf of a family health service provider, or

(d) a person to whom a family health service provider has delegated any functions.

(6) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by—

(a) an independent provider,

(b) a person employed by an independent provider,

(c) a person acting on behalf of an independent provider, or

(d) a person to whom an independent provider has delegated any functions.

(7) Subsections (4) to (6) do not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.

Section 11(2) provides that:

'(2) An investigation shall be conducted in private.'

Section 15 provides that:

'(1) Information obtained by a Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed except—'

(a) for the purposes of the investigation and any report to be made in respect of it,

(b) for the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by virtue of this Act by a Commissioner or any of his officers, or

(ii) an offence of perjury alleged to have been committed in the course of the investigation,

(c) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in paragraph (b),

(d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt) or

(e) where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients as permitted by subsection (1B).

(1A) Subsection (1B) applies where, in the course of an investigation, a Commissioner or any of his officers obtains information which—

(a) does not fall to be disclosed for the purposes of the investigation or any report to be made in respect of it, and

(b) is to the effect that a person is likely to constitute a threat to the health or safety of patients.

(1B) In a case within subsection (1)(e) the Commissioner may disclose the information to any persons to whom he thinks it should be disclosed in the interests of the health and safety of patients; and a person to whom disclosure may be made may, for instance, be a body which regulates the profession to which the person mentioned in subsection (1A)(b) belongs or his employer or any person with whom he has made arrangements to provide services.'