

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2012

Public Authority: NHS North Yorkshire & York Primary Care Trust
Address: Ryedale Building
York
YO1 9PE

Decision (including any steps ordered)

The complainant requested information regarding allegations made against a GP at a practice in Richmond, North Yorkshire. The NHS North Yorkshire & York Primary Care Trust ("the Trust") disclosed the majority of the requested information, however it withheld the remainder, citing sections 30, 31 and 40 of FOIA as a basis for non-disclosure. The Commissioner's decision is that section 40(2) by virtue of section 40(3)(a)(i) applies to the entirety of the withheld information. Therefore the Commissioner orders no steps to be taken. The Commissioner also finds that the Trust breached section 17(1) of FOIA.

Background

1. In 2008 the Trust issued a press release regarding allegations made against Dr Timothy Pearson, a GP at a practice in Richmond, North Yorkshire. That press release stated that the Trust had found no evidence of any wrongdoing on the part of Dr Pearson, who had previously been forced by his partners at the surgery to retire due to those allegations.

Request and response

2. On 7 December 2011 the complainant wrote to the Trust and requested the following information: -
 1. Who wrote the PCT press release regarding Dr Timothy Pearson? i.e. was it written by Dr Pearson or the PCT?

2. Who amended the PCT press release to contain the following "in fact all allegations are without any basis."?
 3. When was this amendment made?
 4. The inclusive date period that the press release was posted on the PCT website.
 5. The number of "hits" to the page in question during the time it was posted on the website.
 6. The average number of hours per week that the medical director worked during the investigation (to include practice hours, OOH hours and work for PCT as medical director.
 7. I would also like to receive written details of (i) which newspapers this was sent to and (ii) on what date.
 8. This part of the complainant's request is contained in a confidential annex to this Notice.
3. The Trust responded to the complainant's request on 23 December 2011. The Trust disclosed some of the requested information to the complainant, namely that in parts 1,4,5,6 and 7, however it refused to disclose the information in parts 2 and 3 of the request, citing the exemptions under sections 40 (personal data) and 42 of FOIA (legal professional privilege) as a basis for non-disclosure. It also refused to disclose the information in part 8 of the request, citing sections 31 (law enforcement) and 40 as a basis for non-disclosure.
 4. Following an internal review the Trust wrote to the complainant on 26 January 2012. The reviewer upheld the original decision.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. Following the Commissioner's intervention, the Trust agreed to disclose the information in parts 2 and 3 of the complainant's request, as section 42 of FOIA did not apply to that information. Therefore, this notice only deals with the information requested in part 8 of that request, which the Trust stated was exempt under sections 30, 31 and 40 of FOIA.

Reasons for decision

Exemptions

7. The Trust has applied sections 30(1)(a), 30(2)(a), 31(1)(a), 31(1)(b) and 40 of FOIA as a basis for withholding the outstanding requested information ("the withheld information"). The Commissioner has firstly considered the application of section 40(2) of FOIA.
8. Section 40(2) of FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
9. One of the conditions, listed in section 40(3)(a)(i), is where disclosure of the information to any member of the public would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 ("the DPA".)
10. The Trust stated that the withheld information contained personal information which was exempt from disclosure under section 40(2) of the Act by virtue of 40(3)(i)(a) as it was personal data and its disclosure would breach the first and second data protection principles.
11. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
 - from those data,
 - or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. Sensitive personal data is defined in section 2 of the DPA as personal data which consists of information as to:-
 - (a) The racial or ethnic origin of the data subject,
 - (b) His political opinion
 - (c) His religious beliefs or other beliefs of a similar nature
 - (d) Whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).
 - (e) His physical or mental health or condition
 - (f) His sexual life
 - (g) The commission or alleged commission by him of any offence, or
 - (h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

The subsection of the DPA which applies in this case is outlined in the confidential annex to this Notice.

13. The Commissioner is satisfied that all of the withheld information falls within the definition of personal data as set out in the DPA. It contains information about a living individual whom it would be possible for the public to directly identify from those data. The information concerns the nature of allegations against that individual, namely Dr Timothy Pearson. Since the information directly relates to that individual, he could be identified from the information.
14. The Commissioner also considers that the withheld information is sensitive personal data, as it falls into one of the categories of sensitive personal data, as defined in section 2 of the DPA.

Would disclosure breach the first data protection principle?

15. The first data protection principle states in part that:
"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
16. The Trust cited section 40(2) of FOIA as a basis for non-disclosure of the withheld information, however it did not specify which principle it was claiming that disclosure of the information would breach. The Commissioner has considered whether such disclosure would be unfair and as such breach the first data protection principle.
17. In deciding whether disclosure of the requested information would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?
18. In most cases the very nature of sensitive personal data means it is most likely that disclosing it will be unfair. As it is information of the most private and personal nature, the reasonable expectation of the data subject is that such information would not be disclosed. The consequences of any disclosure would be likely to be distressing to them.
19. However, it remains important to consider all the circumstances of the case. In particular it is important to consider both the reasonable expectations of the data subjects regarding their personal information and whether some or all of that information has already been put into

the public domain with the knowledge of the data subject, i.e. despite the data falling into the category of sensitive personal data, it is not sensitive to the data subjects. If either factor is relevant, then it is likely that any disclosure would be fair. The Commissioner has considered whether any of these factors are relevant in this case.

20. The Commissioner is satisfied that the fact that there were allegations against Dr Pearson is in the public domain. There is a press release which states that he has been cleared of any wrongdoing, however this does not detail the precise nature of the allegations.

Balancing the rights and freedoms of the data subject with legitimate interests

21. The Commissioner considers that there is a legitimate interest in the public knowing the nature of the allegations against the individual concerned, as, being a GP, he holds a position of trust within the community and there is an interest in the public being informed of anything which may affect this. There may also be a legitimate interest in the public knowing exactly what the individual was alleged to have done, in order to avoid widespread speculation as to the allegations. However, the Commissioner has balanced these legitimate interests against the rights and freedoms of the individual concerned, i.e. the data subject.
22. The Commissioner considers that Dr Pearson would have a reasonable expectation that any information relating to the exact allegations against him, which is not in the public domain, would be kept private and not disclosed. The Commissioner notes that the requested information in this case falls under section 2 of the DPA as it is the individual's sensitive personal data. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Disclosure of such private information would be likely to cause distress to Dr Pearson, thereby having a detrimental effect on him.
23. Although there is a legitimate interest in the public knowing the nature of the allegations, the press release stating that he has been cleared of any wrongdoing is already in the public domain. The Commissioner is of the view that this would inform and reassure the public that no evidence has been found to suggest that an individual holding a position of trust has done anything to violate that trust. This should be sufficient to satisfy the legitimate interest and to hopefully curtail any speculation, without the public having to be aware of the exact nature of the allegations.

24. Having considered all the circumstances of the case, the Commissioner considers that the rights and freedoms of the data subject are very finely balanced against the legitimate interest in disclosure of the withheld information. However, given that there is information already in the public domain, i.e. the press release, which informs the public that no evidence has been found to support the allegations, the Commissioner considers that this should satisfy the legitimate interest of the public without having to disclose the withheld information, which could have a detrimental effect on the individual concerned. Therefore, the Commissioner considers that it would be unfair to disclose the withheld information.
25. Since the Commissioner is satisfied that section 40(2) is engaged in relation to the entirety of the withheld information, he has not considered the Trust's application of the exemptions under sections 30 and 31 to the withheld information.

Procedural requirements

26. Section 17(1) of FOIA states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days. In respect of the withheld information, the Trust did not do this as it had sought, prior to the Commissioner's intervention, to rely on sections 31 and 40 as a basis for non-disclosure and had failed to mention section 30 of FOIA. This is a breach of section 17(1) of FOIA.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF