

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2012

Public Authority: Bangor University
Address: College Road
Bangor
Gwynedd
LL57 2DG

Decision (including any steps ordered)

1. The complainant requested information which was used to produce a particular report entitled "Alcohol Involved Deaths". Bangor University ('the University') refused to provide the information on the basis that it had been provided to it in confidence and it was therefore exempt under section 41(1) of the FOIA. The Commissioner's decision is that the University correctly relied on section 41 of the FOIA for the non disclosure of the requested information. The Commissioner has, however, identified some procedural issues surrounding the University's handling of the request. The Commissioner requires no further action to be taken.

Request and response

2. On 17 October 2011, the complainant wrote to the University and requested information in the following terms:

"a copy of the data that was used to produce the report submitted to the WAG in November 2009 entitled Alcohol Involved Deaths".
3. The University issued a refusal notice on 25 November 2011 stating that the requested information was exempt under section 41 of the Act.
4. The complainant requested an internal review of the University's decision on 14 December 2011.

5. The University provided the outcome of its internal review on 6 January 2012 and upheld its decision that the information requested was exempt by virtue of section 41 of the Act.

Scope of the case

6. The complainant contacted the Commissioner on 31 January 2012 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the University should provide the information he had requested.
7. The Commissioner considers that the focus of this complaint is the University's application of section 41 to the information the complainant requested on 19 December 2011.

Reasons for decision

Section 41

8. Section 41(1) of the FOIA states that information is exempt if it was obtained by the public authority from any other person and if disclosure of the information would constitute a breach of confidence actionable by that or any other person. The exemption is absolute and therefore not subject to the public interest test.
9. The request in this case relates to raw data used to produce a report into Alcohol Involved Deaths. The University was commissioned by North Wales to carry out research into alcohol related deaths and produce a report on its findings. The research project involved researchers accessing data held in two Coroner's offices to examine the role of alcohol in particular deaths. The withheld information comprises notes which researchers made based on the information held within Coroner's offices.
10. The University contends that the information is exempt under section 41 of the FOIA because it was provided to it in confidence by third parties, possesses the necessary quality of confidence, was imparted in circumstances giving rise to an obligation of confidence and disclosure of the withheld information would give rise to an actionable breach of confidence.

Was the information obtained from another person?

11. In deciding whether information has been 'obtained from any other person' the Commissioner focuses on the content of the information

rather than the mechanism by which it was imparted and recorded. The Commissioner therefore takes the view that there is no requirement for any physical passing of documents from one party to another to consider whether the information was "obtained from" a third party and therefore information which is transcribed or recorded by one party can fall under section 41(1)(a) of the FOIA if that record contains information disclosed to it in whatever form from a third party.

12. In this case, the actual documents which have been withheld were created by researchers employed by the University. However, the information contained within the documents comprises entirely of information which was obtained from a third party (the Coroners' office records). The Commissioner is therefore satisfied that the first limb of section 41 is satisfied as the University has obtained the information from another person.

Would disclosure constitute an actionable breach of confidence?

13. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:
 - Whether the information has the necessary quality of confidence;
 - Whether the information was imparted in circumstances importing an obligation of confidence; and
 - Whether disclosure would be an unauthorised use of the information and to the detriment of the confider.
14. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
15. The complainant has argued that the data he has requested is anonymised and does not allow individual persons to be identified. The complainant has also argued that, as the report on which the raw data was based has been published and refers to/summarises the raw data, the raw data should also be considered to be in the public domain.
16. The withheld information in this case (ie the raw data) comprises of information about the deaths of a number of individuals. Whilst the data is anonymous to the extent that it does not contain names and addresses of individuals, it contains other information which, if released, could lead to identification of the deceased individuals, including their date of birth, date of death, marital status, living arrangements, occupation, together with detailed information about the cause of death and relevant medical conditions. In some cases, the withheld

information also includes details of witness statements of persons who knew the deceased individuals.

17. The Commissioner notes that the report on the research carried out by the University has been published. He also notes that there is reference within the report to the Coroner's records which were examined, including details of the method of collection and analysis of data, statistics on files examined, and case studies relating to individual deaths. However, the case studies contained within the report are very heavily abridged synopses of some of the withheld information and do not contain anywhere near the level of detail about the individuals which is included in the withheld information. Further, the case studies in the report do not contain the information which could lead to identification of the individuals, for example, date of birth, date of death, occupation.
18. The University confirmed that the project involved researchers accessing files at two different Coroner's offices. One office granted access to six months of data and the other granted access to two years of data. The University stated that it was granted access to the Coroner's files under the Alcohol Related Deaths project which it undertook on behalf of North Wales Police.
19. The University argues that Coroners' files are not open to the public and information held by a Coroner can only be released at the discretion of the Coroner. The University concedes that inquest hearings are held in open court. However, the University maintains that the official recording of the inquest, the files used and any evidence submitted, whilst discussed in limited detail within the open court, are then held in closed files and the Coroner has discretion about access to such files.
20. Based on the above, the Commissioner does not accept that the withheld information can be said to be publicly available and as such it cannot be considered to be otherwise accessible. Based on the content of the withheld information, the Commissioner does not consider it to be trivial as it contains quite sensitive and personal information about individuals. The Commissioner is therefore satisfied that the information has the necessary quality of confidence.
21. The Commissioner has gone on to consider whether the information was imparted in circumstances importing an obligation of confidence.
22. The Commissioner has been provided with a copy of the contract relating to the Alcohol Related Deaths project between the University and North Wales Police. The contract provides for inspection, collection and analysis of records held at two Coroner's offices. The contract contains a confidentiality and non disclosure agreement in relation to

information obtained during the research project. Clause 1 of the confidentiality agreement in the contract provides that:

“For a period of six years following the date of disclosure both parties will keep confidential and will not disclose to any other person, firm or company any information disclosed by either party and shall not itself make any use of such information for any purpose other than internal recording by information technology and the checking and evaluation of documents to the extent to which the Receiving Party:

- (a) can show that such information is publicly available through no fault of the Receiving party,
- (b) can show that such information was in its possession prior to the date of disclosure,
- (c) may subsequently receive such information from any third party without restriction as to disclosure,
- (d) is authorised by any subsequent written agreement between the parties hereto,
- (e) is constrained by the provision of any statutory enactment, including but not limited to the Freedom of Information Act 2000.”

23. Clause 5 of the confidentiality agreement deals specifically with requests for disclosure under the FOIA and provides that:

“Notwithstanding clauses 1-4 above the parties here to acknowledge and agree that any information requested under the Freedom of Information Act 2000 may be disclosed provided that such disclosure is appropriate and in accordance with the said Act”

24. The University confirmed that access to the Coroners' files was negotiated by North Wales Police. As such, it believes that the information obtained from the Coroners falls within the provisions of the confidentiality agreement within the contract.
25. The Commissioner notes that the published report refers to the aim of the study as being to “determine the feasibility and utility of undertaking confidential reviews into deaths where harmful use of alcohol is relevant”
26. The Commissioner has taken into account the fact that Coroners are not designated as public authorities under the FOIA and their records are not subject to the information access regime of FOIA. There is a separate information access regime for such records under the Coroners

Rules 1984 (as amended). Rule 56 of the Coroners Rules requires that inquest documents (other than exhibits) “be retained by the coroner for at least fifteen years”. This rule also allows the Coroner to “deliver any such document to any person who in the opinion of the coroner is a proper person to have possession of it”. This rule is entitled “Retention and delivery of documents”. The Commissioner also considers that the phrase “to deliver any such documents” does not automatically equate to supplying the documents via an information access regime.

27. The inspection and supply of copies of documents is dealt with in Rule 57 of the Coroners Rules. In the Commissioner’s view, this Rule establishes the access regime for such documents. It makes clear that supply of copy documents is at the discretion of the Coroner in that documents are supplied to “any person, who in the opinion of the coroner, is a properly interested person”. In the Commissioner’s view it is clear that any disclosure of information is at the Coroner’s discretion and should only be made to persons that the Coroner considers to be an interested person.
28. Based on the access regime in respect of Coroner’s records, the contract in place for the project and the expectation that such information would not be released into the public domain, the Commissioner is satisfied that the information was imparted in circumstances importing an obligation of confidence.
29. The third element of the test of confidence involves the likely detriment to the confider if the confidence is breached.
30. In deciding whether to disclose the requested information the University advised that it considered whether it would be fair on the deceased individuals’ families and friends to disclose the information without their consent. The University believes that disclosure could cause unnecessary and unjustified distress or damage because it would be possible to identify deceased individuals from the data.
31. The Commissioner has taken into account the personal nature of the withheld information and considers there is not necessarily any need for there to be detriment to the confider, in terms of any tangible loss, in order for it to be protected by the law of confidence. He also considers that the loss of privacy can be a detriment in its own right¹.
32. In this case, the withheld information was not only provided to the University in confidence by the Coroner, it contains the sensitive information of a number of individuals including information about their

¹ Bluck v ICO & Epsom and St Helier University Hospital NHS Trust [EA/2006/0090] para 15.

general health and well being, and circumstances leading up to, and cause of their death. The test under section 41 of FOIA is whether disclosure would constitute a breach of confidence actionable by the person who provided the information or any other person. The Commissioner considers that whilst there may be a breach of confidence owed to the Coroners who allowed access to their records, and North Wales Police, who commissioned the research under a contract containing confidentiality clauses, in the Commissioner's opinion a stronger consideration is that disclosure of the withheld information would be a breach of the confidence owed to the deceased individuals and individuals who provided witness statements to the Coroners for the purpose of their investigations.

33. The Commissioner considers that knowledge of the disclosure of the deceased individuals' personal information could distress surviving relatives of the deceased. Knowledge that such information has essentially been put into the public domain may be sufficient detriment. It follows then that in determining whether disclosure would constitute an actionable breach of confidence, it is not necessary to establish whether, as a matter of fact, any of the deceased individuals has a personal representative who would take action.

Would a public interest defence be available?

34. As section 41(1) is an absolute exemption there is no public interest test under section 2 of the FOIA. However, case law suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The duty of confidence public interest test assumes that the information should be withheld unless the public interest in disclosure exceeds the public interest in maintaining the confidence. The Commissioner has therefore gone on to consider whether there would be a defence to a claim for breach of confidence.
35. The complainant has argued that it is in the public interest that the information is disclosed so that individuals can verify the research findings outlined in the report. The complainant was involved in the research project and believes there may be discrepancies between the information he has in his possession in relation to the research carried out, and the findings contained within the report. He indicated that even if the information requested should not be disclosed under the FOIA, he believed it should be disclosed to him in order that he could check any discrepancies between the data sets he holds himself and the information held by the University.
36. The complainant acknowledges that the contract between the University and North Wales Police contains a number of confidentiality clauses, but

is of the view that they only refer to confidentiality whilst the project was ongoing. He is of the opinion that, as the report has been published, there is no real likelihood that disclosure would leave the University open to legal action for breach of confidence. He added that he had seen no evidence that North Wales Police had threatened action against the University if the information was disclosed.

37. There is always some public interest in the disclosure of information held by public authorities to help to bring about more accountability and transparency. This is especially so in relation to activities involving the spending of public money – the Commissioner understands that the research project was funded by the Welsh Assembly Government through North Wales Police.
38. The Commissioner considers that there is a general public interest in the subject matter to which this request relates i.e. the identification and analysis of deaths involving the consumption of alcohol. Disclosure of the raw data collected during the research project could further the understanding of any risks associated with the consumption of alcohol. The Commissioner also accepts that there is a public interest in individuals being able to verify research which is used to inform and produce reports such as the one in this case.
39. In considering this case the Commissioner has been mindful of the wider public interest in preserving the principle of confidentiality. It is in the public interest that confidences should be respected. The encouragement of such respect may in itself constitute a sufficient ground for recognising and enforcing the obligation of confidence².
40. Taking into account the nature and content of the withheld information, the Commissioner does not consider that the disclosure to the world at large (under the FOIA) is an appropriate manner in which to scrutinise the accuracy, or otherwise of any findings of the report which was produced on completion of the research project. The Commissioner is mindful of the need to protect the separate access regime which exists in relation to access to records held within Coroners' offices. Disclosure would undermine the discretion that the Coroner has in respect of access to such records. This would not be in the wider public interest.
41. Taking into account all the circumstances of this case, the nature of the relationships between the parties and the content of the withheld information, the Commissioner considers that the University would not have a public interest defence for breaching its duty of confidence. The Commissioner cannot conclude that there is a strong enough public

² Bluck v ICO & Epsom and St Helier University Hospital NHS Trust [EA/2006/0090], para 8.

interest argument to disclose the requested information. Therefore the Commissioner finds that the requested information is exempt under section 41 and the University was correct to withhold this information.

Procedural requirements

42. The FOIA requires a public authority to respond to an information request within 20 working days of receipt of a request, and either disclose the requested information within this period or issue a refusal notice which explains the basis on which any information has been withheld. The request was made on 17 October 2011 and the refusal notice was not issued until 25 November 2011. As such the University breached this requirement, both in terms of confirming the information was held and issuing a refusal notice. The University should ensure that such delays in responding to requests are not repeated in the future.

Right of appeal

43. 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

44. 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.
45. 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

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