

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2013

Public Authority: Southern Health & Social Care Trust

Address: Bannvale Site
10 Moyallen Road
BT63 5JX

Decision (including any steps ordered)

The complainant has requested information regarding complaints made against senior management in the Southern Health and Social Care Trust (the Trust) within the last five years. The Trust refused to disclose some of the requested information ("the withheld information") citing section 40(2) of FOIA by virtue of section 40(3)(a)(i) as a basis for non-disclosure. The Commissioner's decision is that the Trust has correctly applied section 40(2) of FOIA to the withheld information, therefore the Commissioner requires no steps to be taken.

Request and response

1. On 5 October 2012, the complainant wrote to the Trust and requested information in the following terms:

"Have any complaints been made in the last five years regarding the, Support & Recovery Services Manager within the Mental Health Directorate of The Southern Trust?

Have any complaints been made against any Senior Management also within this Directorate?

Have any individual staff members raised any complaints either verbally or in writing with The Human Resources Department regarding any of the above management?"

2. The Trust responded on 29 October 2012. It refused to disclose the information in part 1 of the complainant's request, citing the exemption under section 40(2) of FOIA as a basis for non-disclosure. It disclosed information in relation to parts 2 and 3 of the complainant's request.

3. Following an internal review the Trust wrote to the complainant on 22 November 2012. The reviewer upheld the original decision

Scope of the case

4. The complainant contacted the Commissioner on 26 November 2012 to complain about the way his request for information had been handled.
5. The Commissioner has considered the Trust's application of section 40(2) to the withheld information.

Reasons for decision

6. 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.
7. 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.)
8. In its internal review response, the Trust stated that the withheld information was exempt from disclosure under section 40(2) of FOIA. It clarified that the information was personal data from which individuals (other than the complainant) could be identified and that its disclosure would breach the first data protection principle.
9. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - 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 met.
10. In order to reach a view on whether this exemption could be applied, the Commissioner initially considered whether or not the information in question was in fact personal data.

Is the withheld information personal data?

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. The withheld information consists of information about an individual. The Commissioner considers that the withheld information is personal data as a specific living individual could be identified from it.

Would disclosure of this personal data be unfair and in breach of the first data protection principle?

13. The Trust in this case has not specified which data protection principle(s) would be breached by the disclosure of the withheld information, however the Commissioner has considered whether such disclosure would be unfair. The personal data in this case would relate to the individual in a professional capacity. This is significant in that the Commissioner has made a clear distinction in previous decisions between requests for information relating solely to professional matters and information relating to individuals outside their professional capacity. The Commissioner's position is that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than would disclosure of information relating to individuals in anon-professional capacity.
14. When considering whether a disclosure under FOIA would be fair the Commissioner's approach is to reach a balanced view after considering the following factors:
- Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?
 - Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?
 - The possible consequences of disclosure.
 - The reasonable expectations of the individual(s) about what will happen to their personal data.
15. The Trust has not specified whether or not it has sought the consent of the individual to disclosure of his/her personal data, however the Commissioner is of the view that, due to the nature of the information, the individual would have a reasonable expectation that his/her personal data would not be disclosed.
16. The Commissioner has taken into account the fact that the information relates to the individual in his/her working life as opposed to personal life. However, the Commissioner considers that disclosure of the withheld information could impinge upon the individual's private life.

The Commissioner considers that disclosure would be likely to be distressing to the individual.

17. The Commissioner has taken into account the fact that the individual would have a reasonable expectation that such information would be kept confidential. Therefore, the Commissioner considers that the emotional wellbeing of an individual may be affected by disclosure even though the distress or damage caused may be difficult to clearly evidence.
18. The Commissioner considers that there is a real risk that release of the information would cause damage and intrusion to the individual concerned in this case, particularly due to the fact that it is outside their reasonable expectations for information of this nature to be made available to the world at large.
19. However, the Commissioner's approach to cases like this is that, notwithstanding the data subjects' reasonable expectations or any damage or distress caused to him or her by disclosure, it may still be fair to disclose requested information if it can be argued that there is a more compelling public interest in releasing the information. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in disclosure.
20. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure; that is to say any public interest in disclosure must outweigh the public interest in protecting the rights and freedoms of the data subject.
21. Whilst there is a general public interest in knowing that public bodies deal with complaints properly, the Commissioner does not consider that simply disclosing whether there have been any complaints against a particular individual within the Trust would inform the public in any way as to how such complaints, if in existence, were or would be handled. The Commissioner's view is that given the strong expectations of privacy and the likely alarm and distress that disclosure would cause, the disclosure of the withheld information would be disproportionate, especially as simply disclosing whether complaint(s) have been received by the Trust could be prejudicial to the individual

as there would be no additional information as to whether such complaints, if any, were substantiated. Consequently, the Commissioner is satisfied that the section 40(2) exemption is engaged in this instance.

Other matters

22. The Commissioner notes that, whilst the Trust responded in good time to the Commissioner's request for submissions, it provided very scant detail as to its reasons for applying section 40(2) to the withheld information. It failed to provide an explanation as to which data protection principle would be breached, and why, by the disclosure of the withheld information. The Commissioner would remind the Trust that he requires detailed explanations as to the application of any exemption in order to make a balanced decision.

Right of appeal

23. 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

24. 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.
25. 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
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