

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 August 2013

**Public Authority:** NHS Commissioning Board  
**Address:** South Side  
105 Victoria Street  
London  
SW1E 6QT

#### **Decision (including any steps ordered)**

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1. The complainant requested information regarding allegations made by the Indian Workers Association and an investigation by University Hospitals Coventry and Warwickshire NHS Trust.
2. The Commissioner's decision is that other than exempt personal data the public authority does not hold information further to that already supplied to the complainant.
3. The Commissioner requires no steps to be taken by the public authority.
4. At the date of the information request and complaint to the Commissioner the responsible public authority was West Midlands Strategic Health Authority (the SHA). However, from 1 April 2013 the SHA was disbanded and its functions taken over by the NHS Commissioning Board. Therefore for the purposes of this decision notice the public authority is the NHS Commissioning Board. However, for the sake of clarity this decision notice will refer to the SHA as if it were the public authority.

## Request and response

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5. On 20 April 2012 the complainant requested the following information:

*"I would like to ask, using the Freedom of Information Act for all documentation that the Strategic Health Authority holds or has controlled concerning allegations made by the Indian Workers Association about discrimination and racism at University Hospitals Coventry and Warwickshire. The documentation should span the dates January 2007 to July 2009. This should include all communications between the Strategic Health Authority and officers or representatives of the trust. All communications between John MacDonald or any other appointed investigator(s) with the trust and/or strategic health authority and/or the Department of Health. Any communications between the SHA and the department of health."*

6. The Strategic Health Authority (SHA) responded on 1 June 2012. It provided the complainant with a number of documents relating to the information requested. The SHA said that whilst it had suggested Mr John MacDonald to the trust as a suitable person to head an investigation it held no correspondence between the SHA and the trust regarding the matters requested. It explained that Mr John MacDonald was commissioned by the trust (not the SHA) to carry out the investigation and its terms of reference were agreed without the SHA's involvement.
7. The complainant appealed on 9 July 2013. The SHA's internal review of 2 August 2013 informed the complainant that all of the information it held within the remit of the request had been provided to him.

## Scope of the case

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8. On 6 November 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He believed the SHA held more information but had not disclosed this. He believed this because the Indian Workers Association and a doctor who had been suspended by the SHA had told him that the SHA had more correspondence than had been disclosed. These two sources had provided the complainant with copies of such correspondence.

## Reasons for decision

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9. The Commissioner asked the SHA to clarify whether or not it held further information as suggested by the complainant and requested responses to the following search and retention inquiries:
- (i) What searches were carried out for the information falling within the scope of the request.
  - (ii) Which members of staff were consulted; please list them.
  - (iii) Please explain which sets of records or data resources were searched. Were relevant diaries and notebooks included.
  - (iv) Where searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
  - (v) In cases where the information has been held was it held in the form of manual or electronic records.
  - (vi) If information in relation to any of the requests was electronic data might copies have been made and held in other locations.
  - (vii) If searches included electronic data, which search terms were used.
  - (viii) If recorded information has been held in relation to the requests when did the public authority cease to retain this information.
  - (ix) Where information in relation to the requests was previously held but has now been destroyed or deleted is there any audit trail of that.
  - (x) Was any of the information destroyed or deleted in line with an established records retention schedule.
  - (xi) Please provide a copy of the public authority's records retention policy.
10. The SHA informed the Commissioner that the suspended doctor who had provided the complainant with a copy of further correspondence had

been provided with this correspondence via the subject access provisions of the Data Protection Act (DPA). The SHA stated that this information was the personal data of the doctor and as such was exempt from public disclosure under s40 (2) FOIA and the complainant had no entitlement to it. The SHA said this was why information that had been supplied to the complainant had not included that provided to the doctor.

11. Section 40(2) FOIA states that information is exempt if it constitutes personal data disclosure of which would breach any of the data protection principles.
12. The Commissioner asked the SHA for a copy of the information that had been withheld from the complainant in order to ascertain whether it had been appropriately exempted from disclosure. Upon examination the Commissioner has been satisfied that the entirety of the information withheld constitutes the personal data of the doctor. Its disclosure would breach the first principle of the DPA which requires that personal data shall be processed fairly and lawfully. Public disclosure would be unfair to the doctor and accordingly the information is exempt under s40(2) FOIA.
13. The Commissioner notes that whilst the SHA was correct to exempt the doctor's personal data from disclosure it should have informed the complainant that it held this information and that it was exempt under s40(2) FOIA. In this regard the SHA breached section 17(1)(a) and (b) FOIA. Section 17 FOIA states that if information is exempt from disclosure the authority must state that fact and specify the exemption.
14. Copies of correspondence between the Indian Workers Association and the suspended doctor (into which the SHA had been copied) had been supplied to the Commissioner by the complainant. The complainant had also supplied the Commissioner with copies of correspondence sent from the association to the SHA. This correspondence had not been retained by the SHA. The SHA said that it appeared from the sample provided by the complainant that a response from the SHA had been drafted in the mode of a general communication to the NHS trust and the association. Retention by the SHA had therefore been unnecessary for the period required for complaints – 10 years as listed in its code of practice on records management.
15. It is understood that the complainant has been supplied with the documentation that he requested concerning the Indian Workers Association from the association itself.
16. Other than personal data correctly withheld under section 40(2), the Commissioner is satisfied by the responses to his search and retention

inquiries that the SHA does not hold information further to that already supplied to the complainant.

## Right of appeal

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17. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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**