

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2014

Public Authority: NHS Commissioning Board
Address: Southside
105 Victoria Street
London
SW1E 6QT

Decision (including any steps)

1. The complainant requested information relating to her healthcare. The NHS Commissioning Board (NHS England) stated that the information was exempt from disclosure by virtue of section 40(1) of FOIA.
2. The Commissioner's decision is that NHS England correctly applied section 40(1) (personal information of the applicant) to the withheld information. He requires no steps to be taken as a result of this decision notice.

Background

3. This case has been the subject of a previous decision notice FS50540516.

Request and response

4. On 14 January 2014, the complainant wrote to the public authority and requested information in the following terms:

'Please send me copies of the entire correspondence relating to my healthcare between yourself, NHS England, Arden, Herefordshire and

Worcestershire and the GP practice at (name redacted) Hereford to include records of any telephone conversations.'

5. Following the Commissioner's decision notice dated 2 June 2014, NHS England provided a response under FOIA and applied section 40(1) (personal data) to refuse to disclose this information. This was upheld at the internal review on 12 September 2014.
6. However, NHS England had treated the request for the information 'relating to your healthcare' under the Data Protection Act and have provided the complainant with all the information that it holds.
7. On 22 September 2014 the complainant brought a complaint to the Commissioner that this is not personal data and should be disclosed under FOIA.

Reasons for decision

Section 40 - personal information

8. NHS England told the complainant that the information she was seeking constitutes her own personal information and that under section 40(1) of FOIA it was not obliged to provide it to her.

Section 40(1) of FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

9. In other words, under section 40(1) of FOIA information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).

Is the requested information personal data?

10. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.

11. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
12. Having considered a sample of the withheld information provided to him by the complainant, the Commissioner is satisfied that, in the context of the request, the withheld information constitutes information that falls within the definition of 'personal data'.
13. Furthermore, in the Commissioner's view, given the context and the wording of the request, it is clear that the complainant is requesting her own personal data. He has reached this conclusion on the basis that the withheld information relates to healthcare and that the complainant is the focus of that healthcare.
14. The Commissioner is satisfied that the requested information comprises information from which the requester can be identified. The Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be provided with their personal data should be made in accordance with the DPA.
15. In this respect, he is satisfied that NHS England has already provided the requested information as if it was a subject access request under the DPA.
16. The Commissioner is therefore satisfied that NHS England correctly applied section 40(1) in responding to the request.

Right of appeal

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

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

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**