

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2016

Public Authority: Warrington and Halton Hospitals Foundation Trust

Address: Kendrick Wing
Warrington Hospital
Warrington
WA5 1QG

Decision (including any steps ordered)

1. The complainant made a request to Warrington and Halton Hospitals Foundation Trust (the Trust) for information relating to a Serious Untoward Incident (SUI). The Trust refused to comply with the request under section 40(2) and 21 FOIA.
2. The Commissioner's decision is that the Trust has correctly applied section 40(2) and 21 FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 20 July 2015 the complainant requested information of the following description:

"Can I have copies of interview notes, documents examined interview transcripts ,interview records, statements, notes etc. taken by the Lead Investigating Officer(s): [named individual], Consultant Obstetrician and Gynaecologist or anyone else that were collated as part of the information gathered to inform Warrington and Halton Hospitals Foundation Trust Serious Untoward Investigation (2012-28988 SUI Report) for me please in relation to [named individual's] death.

I have looked at the transitional policy for Warrington CCG that was in use at the time of [named individual's] death and note:

21.1 Copies of all interview notes, documents examined, and working documents such as plans of the site of the incident should be included in the appendix. Also included should be a breakdown of the Review team, including experience / qualifications & job titles of each member. Whilst these should form part of the organisational final report, they do not need to be supplied in the NHS Warrington copy of the report, unless specifically requested."

5. On 14 August 2015 the Trust responded. It refused to disclose the requested information under section 40(2) FOIA.
6. The complainant requested an internal review on 16 August 2015. The Trust sent the outcome of its internal review on 16 September 2015. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 17 September 2015 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the Trust confirmed that the complainant had already been provided with some of the requested information and therefore it considers that this was already accessible to him. This was an unredacted copy of the SUI (outside of FOIA) and the final draft report dated June 2014. It therefore confirmed that it was just the interview notes that it was withholding under section 40(2) FOIA.
9. The Commissioner has considered whether an unredacted copy of the SUI and the final draft report dated June 2014 has been provided to the complainant outside of FOIA and is therefore already reasonably accessible to him. If so whether it would be exempt under section 21 FOIA and whether the Trust was correct to withhold the interview notes under section 40(2) FOIA.

Reasons for decision

Section 21 FOIA

10. Section 21 FOIA provides that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

11. In this case the Trust has confirmed that an unredacted copy of the SUI and the final draft report dated June 2014 has been provided to the complainant outside of FOIA.
12. As the complainant has already been provided with a copy of this information the Commissioner does consider that it is reasonably accessible to him. It is therefore exempt from disclosure under section 21 FOIA.

Section 40(2)

13. Section 40(2) 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.
14. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (DPA).
15. The Trust has informed the Commissioner that it believes that the witness interview notes contain the personal data of the witnesses themselves, and that the disclosure of these would be both unfair and unlawful, and therefore in breach of the first principle of the DPA.
16. In order to reach a view on the Trust's arguments the Commissioner has first considered whether the witness interview notes contain the personal data of third parties.
17. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
18. In this instance the information in question is witness interview notes of discussions with staff members who were involved in the events surrounding a serious untoward incident involving a patient. These statements identify the staff by name and job title, and detail their actions and opinions, as well as details of the actions of some of their colleagues. On this basis the Commissioner is of the view that the interview notes are the personal data of the witnesses. He also believes that the interview notes contain personal data relating to other individuals who are referred to in the notes.
19. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of

personal data is fair and lawful. The Commissioner has initially considered whether the disclosure of the witness interview notes under FOIA would be fair.

20. When considering whether the disclosure of this information under the FOIA would be fair, the Commissioner has to take into account the fact that FOIA is applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner is not able to take into account the unique circumstances of the applicant, or their relationship to the deceased person. Instead the Commissioner has had to consider that if the information were to be disclosed, it would in principle be available to any member of the public.
21. In cases such as this, witnesses provide information with the expectation that this is being done in confidence. Disclosure would be unfair as it would not be in the reasonable expectation of the witness for their interview notes to be made available to the public at large through disclosure under FOIA. Instead, the witnesses believed that the information was provided in confidence, and would only be used for the Trust's internal investigation into the serious untoward incident.
22. The withheld information consists of witness interview notes, given by staff members of various ranks who were involved in the events surrounding an incident involving a patient. The information was provided in the course of an internal investigation carried out by the Trust as to what had happened. The interview notes reflect each witness's recollection of the events surrounding the incident.
23. After considering the nature of the withheld information, the Commissioner believes that the witnesses would have had the reasonable expectation that the interview notes would only be used for the Trust's internal investigation procedures, and would not be placed into the public domain.
24. The Commissioner has however gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subjects set out above.
25. Whilst the Commissioner understands why the complainant, who has a personal interest in the matter, would want to have access to as much information as possible to explain the circumstances surrounding the SUI, this is not a legitimate public interest. The Commissioner does consider however that there is some public interest, within the local population served by the Trust, in understanding when and why things have gone wrong within a hospital. However on balance, the Commissioner does consider that the information provided by witnesses

was given in confidence for the purpose of the Trust's internal investigation and the interviewees had a reasonable expectation that their interview notes would not be disclosed into the public domain.

26. After considering the nature of the withheld information, and the reasonable expectation of the witnesses, the Commissioner believes that the disclosure of the witness statements under FOIA would be unfair and in breach of the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subjects in this case.
27. Therefore the Commissioner believes that section 40(2) FOIA is engaged, and provides an exemption from disclosure under FOIA. As such he believes that the interview notes should be withheld.

Right of appeal

28. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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