

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2016

Public Authority: Wirral University Teaching Hospital NHS Foundation Trust (the Trust)

Address: Arrowe Park Road
Upton
Wirral
CH49 5PE

Decision (including any steps ordered)

1. The complainant made a request to the Trust for the full staff rota for the doctors and nurses of all levels and consultants on ward 21 for the night shift on particular dates. The Trust provided some information, it failed to provide some information which is held but in relation to which it has not applied exemptions and it has refused to disclose some information under section 40(2) FOIA.
2. The Commissioner's decision is that the Trust has not provided all of the information it holds relevant to the scope of this request and has incorrectly applied section 40(2) FOIA in this case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Trust must provide all information held relevant to the scope of this request, including the names of all doctors, nurses and consultants on the rotas along with start and finish times for the night shift of Thursday 15 October 2016 and the day shift of Friday 16 October 2015.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 January 2016 the complainant requested information of the following description:

"I wish to obtain the full staff rota for the doctors, nurses of all levels and consultants on ward 21 for the night shift on Thursday 14th October 2015 and also all shifts on Friday 15th October 2015."

6. On 11 May 2016 the Trust responded. It provided the complainant with some of the information she requested but confirmed that it was withholding the names of staff below a certain level.
7. The complainant requested an internal review on 2 June 2016. The Trust sent the outcome of its internal review on the same date. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 9 June 2016 to complain about the way her request for information had been handled. The complainant disputes the application of section 40(2) FOIA, but also does not consider that the Trust provided her with all of the information held for the dates requested.
9. During the course of the Commissioner's investigation the Trust did provide two further staff names along with their shift start and finish times.
10. The Commissioner has considered whether the Trust was correct to withhold some staff names under section 40(2) FOIA and whether it provided all other information relevant to the scope of the request.

Reasons for decision

Section 1 FOIA

11. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
12. In this case there has been some confusion as the complainant has requested information for Thursday 14 October and Friday 15 October

2015, when in actual fact the dates were Thursday 15 and Friday 16 October in 2015.

13. The Trust has confirmed that the information that has been provided to the complainant related to the night shift of Thursday 15th/Friday 16th October 2015 and the daytime shift of Friday 16th October 2015.
14. In an email to the Commissioner the complainant has stated that, "I would like to also clarify, which to be honest I have indicted to the trust, without bluntly putting it in black and white that I require the information for Thursday 15th night shift and the day of Friday the 16th."
15. The Commissioner considers that the Trust is therefore aware that the complainant required the information for the night shift on the Thursday and the day shift of the Friday during that week in October 2015. She does therefore consider that the Trust has interpreted the request for the correct night and day shifts the complainant required.
16. So whilst the Commissioner is satisfied that the Trust was processing the request in relation to the correct shifts required, the Commissioner does consider there is some information held by the Trust which has not been provided to the complainant and in relation to which no exemptions have been applied.
17. The complainant has stated in her submissions to the Commissioner that, "As far as the above is concerned that is fine, but as I ask for the rosters I am of course asking for the times the shifts started and ended, which has not necessarily been the information given so far." Upon viewing the information provided to the complainant it is clear that shift start and finish times have not always been provided. They have been provided in relation to some staff and in relation to the information provided during the course of the Commissioner's, it is therefore clear that the Trust understood the request for rotas to include the start and finish times of the staff on duty. The Commissioner therefore considers that start and finish times are held for all staff and should be provided to the complainant.

Section 40(2)

18. 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.
19. 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 DPA.

20. The Trust has informed the Commissioner that it is withholding the names of some staff members.
21. The Commissioner has first considered whether the withheld information is personal data.
22. 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.
23. In this instance the information in question is staff names. This is information from which living individuals would be identifiable. The withheld information is therefore personal data.
24. 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 withheld names under the FOIA would be fair.
25. 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. 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.
26. The Trust considers that it is not appropriate to disclose the names of less senior staff, below the level of consultant, as it would be unfair and therefore in breach of the first principle of the DPA.
27. The Trust has essentially argued that the names of more junior staff should be withheld as they would have no expectation that their names would be disclosed in this context as they do not occupy senior roles.
28. The Commissioner notes that during the course of her investigation the Trust has disclosed two further names. The Commissioner also notes that these two individuals are not consultants and therefore it is clear that the Trust has now considered the seniority of all staff within the rotas to determine whether or not it would be unfair to disclose their names in the context of this request and not just made a blanket cut off at consultant level.

29. Having said that, the Commissioner does consider that working on a hospital ward, is by its nature a very public facing role. Usually ward staff wear identification badges which are visible to patients and visitors alike.
30. In relation to the nature of the withheld information itself, the Commissioner considers that it is of a high level and factual nature. The information does not contain any comments about the individuals in question – and merely records the fact that those members of staff were on rota for those particular shifts.
31. The Commissioner considers that given the very factual nature of the withheld information and the fact that even more junior staff members occupy very public facing roles, it would not be unfair to disclose the names of all staff on the requested rotas.
32. The Commissioner therefore considers that section 40(2) FOIA was not correctly engaged in this case.

Right of appeal

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

34. 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.
35. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF