

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 April 2018

**Public Authority:** NHS Basildon and Brentwood Clinical Commissioning Group (the CCG)

**Address:** Phoenix Place  
Christopher Martin Road  
Basildon  
SS14 3HG

#### Decision (including any steps ordered)

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1. The complainant made a request for the names of individuals involved in drafting a particular document. The CCG refused to disclose the requested information under section 40(2) FOIA.
2. The Commissioner's decision is that the CCG has correctly applied section 40(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 30 August 2017 the complainant requested information of the following description:

Under the Freedom of Information Act (2000) please email me back a list of all the names of the people involved in drafting the following document from Mid Essex CCG:

*'Policy Statement: Prescribing of therapeutic clothing (excluding compression garments) on NHS prescription'*.  
(TherapeuticClothingPOL20178VI.OFINAL)

5. On 8 September 2017 the CCG responded. It refused to disclose the requested information under section 40(2) FOIA.

6. The complainant requested an internal review. The CCG sent the outcome of its internal review. It upheld its original position.

## Scope of the case

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7. The complainant contacted the Commissioner on 2 November 2017 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has therefore focused on the application of section 40(2) FOIA to the withheld information.

## Reasons for decision

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### Section 40(2)

9. Section 40(2) 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)(a)(ii) is satisfied.
10. One of the conditions, listed in section 40(3)(a)(ii), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
11. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.

### Is the withheld information personal data?

12. In order to rely on the exemption provided by section 40(2), the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*"personal data" means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual'.*

13. The Commissioner has reviewed the withheld information in this case. The names of the individuals involved in drafting the document referred to in the request is information that would identify those individuals.
14. In view of this, the Commissioner considers the withheld information to be the personal data of those individuals.

### **Reasonable expectations**

15. In its submission to the Commissioner, the CCG stated that it does not consider that the individuals concerned would have a reasonable expectation that their personal data would be disclosed into the public domain.
16. The CCG said that the individuals who worked towards creating the policy would not expect to be named. It explained that the policy is a creation of the team as a whole (as listed within the author section of the policy information), was approved by the Medicines Management Committee, and is a CCG policy, so it should be the CCG as a whole who are held accountable for anything that is within it.
17. It went on that only board level names are released by the CCG, as all decisions go via them and therefore they are the accountable individuals.
18. The Commissioner is satisfied that whilst the information relates to the individuals professional working life, the individuals would not expect their names to be disclosed in the context of their involvement in the drafting of this particular document.

### **Consequences of disclosure**

19. The CCG argued that release of specific names could lead to those individuals being contacted directly, either in a professional capacity, or outside of their work life.
20. It went on that the team stopped including individual names on policies, beginning last year, after individuals were personally contacted with aggressive phone calls from patients who disagreed with the content or some prescribing restrictions. No member of the team would be making such a decision alone and they should not be held responsible for the difficult funding decisions the CCG has to make.
21. The Commissioner considers that as staff at the CCG have previously been contacted when individual names were published alongside the data subjects work on particular policies, there is a very real risk of this occurring should the withheld information in this case be disclosed.

**Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

22. 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.
23. Whilst the Commissioner understands that the complainant has a personal interest in the withheld information this is not a legitimate public interest.
24. After considering the nature of the withheld information (the names of staff involved in drafting a particular document), and the reasonable expectation of the data subjects, the Commissioner believes that disclosure 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.
25. Therefore the Commissioner considers that section 40(2) FOIA is engaged, and provides an exemption from disclosure.

## Right of appeal

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26. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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**