

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2022

Public Authority: **Belfast Health and Social Care Trust**
Trust Headquarters
Non Clinical Support Building
Royal Victoria Hospital
274 Grosvenor Road
Belfast
BT12 6BA

Decision

1. The complainant has requested, from Belfast Health and Social Care Trust (the Trust), the daily number of patients of a certain age on ventilation in a specified hospital during a specified period of time.
2. The Commissioner's decision is that the Trust was correct to cite section 40(2) of FOIA.
3. The Commissioner does not require the Trust to take any steps following this decision notice.

Request and response

4. The complainant made the following information request to the Trust on 1 December 2021:

"1. Could you provide me with the daily number of 18-year-olds who were placed on ventilation in the Mater Hospital during June and July of 2021?

2. Could you provide me with the daily number of 18-year-olds who were placed on non-invasive ventilation in the Mater Hospital during June and July of 2021?"
5. The Trust answered 'none' in respect of the second part of the request. It refused to disclose information held within scope of the first part,

citing section 40(2) of FOIA, although it did state that "During the specified period there were <5 18 year olds placed on invasive ventilation in the Mater hospital". The complainant argued it would not be possible to identify patients, but the final position of the Trust at internal review was to maintain its application of section 40(2) in respect of the first part of the request – the Trust said "... an exact figure ... could make patients personally identifiable ... it may lead to identification if combined with other information ...".

Reasons for decision

6. This reasoning covers whether the Trust was correct to apply section 40(2) to the first part of the request. The complainant has said to the Commissioner "it is simply not possible to identify people by asking for numbers".
7. Section 40(2) of FOIA, with section 40(3A), provides that information is exempt information if it is the personal data of any other individual(s) and disclosure would contravene any of the data protection principles.
8. Personal data is information that relates to an identified or identifiable individual.
9. The Commissioner considers that the requested/withheld information 'relates to' the individual(s) concerned (the 'data subject(s)'), because it is about them being placed on ventilation in the Mater Hospital during June and July 2021. The Trust has explained to the Commissioner how the individual(s) would be identifiable, and the Commissioner is satisfied that the Trust's position is correct.
10. The complainant's request said "provide **me** with [the information]" (emphasis added) and the complainant has said to the Commissioner "I disagree with their refusal to provide **me** with the requested information" (emphasis added). The Commissioner highlights to the complainant that disclosure under FOIA would be 'to the world', not just the complainant.
11. Even if the complainant would be unable to identify the data subject(s), others could – for instance relatives of the data subject(s), or others in the community.
12. The Commissioner is satisfied that the information is personal data.
13. Furthermore, it is 'special category' personal data – "data concerning health" is one of the types of special category personal data listed at Article 9(1) of the UK General Data Protection Regulation (UK GDPR).

14. Special category personal data is particularly sensitive and therefore warrants special protection. Such data can only be processed (which includes disclosure under FOIA in response to an information request) if one of the conditions listed under Article 9(2) of the UK GDPR is met.
15. In this case the relevant conditions have not been met, because the Commissioner has seen no evidence/indication that the data subject(s) has/have consented to the disclosure of the information or that the information has been manifestly made public by the data subject(s).
16. As none of the conditions required for processing special category personal data is satisfied there is no legal basis for its disclosure in response to the FOIA request. Disclosing the requested data would contravene a data protection principle (namely Article 5(1)(a) of the UK GDPR – the principle that personal data shall be processed “lawfully ...”) and would be a prohibited disclosure of special category personal data.
17. The information is therefore exempt, and the Trust was correct to apply section 40(2) of FOIA.

Right of appeal

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

19. 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.
20. 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

**Daniel Kennedy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**