

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2023

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle Upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant made an eleven part request to the Care Quality Commission (the CQC) for information relating to the North East Ambulance Service NHS Foundation Trust (NEAS).
2. The CQC stated that it did not hold any information falling within the scope of parts 2), 3), 8), 9),10) and 11) of the request. It provided the information it held in relation to parts 1) and 7) of the request. It relied on section 40(2) of FOIA to withhold the information it held in relation to parts 4), 5) and 6) of the request.
3. The Commissioner's decision is that the CQC is entitled to rely on section 40(2) of FOIA to withhold the information held in relation to parts 4), 5) and 6) of the request.
4. However, the Commissioner has recorded a procedural breach of section 10 of FOIA as the CQC failed to respond to the complainant's request within the statutory time limits.
5. The Commissioner does not require the CQC to take any steps as a result of this decision notice.

Request and response

6. On 13 April 2023, the complainant submitted the following request for information:

"I have recently received information from a Freedom Of Information request from the North East Ambulance Service NHS Foundation Trust. In connection with the information disclosed, I request the following information under the provisions of the FOIA 2000, which is held by your organisation as follows

- 1) Confirm that you are in possession of two reports dated March and June 2020, which were carried out by the company "Audit One" after being instructed by the North East Ambulance Service NHS Foundation trust.
- 2) Could you please confirm the dates these two audit reports came into your possession?
- 3) Could you please confirm if such documents were supplied to the CQC voluntarily or were they supplied as a result of CQC regulatory powers and functions under the Health and Social Care Act 2008?
- 4) Could you please confirm the name of the inspector who requested the Audit One reports?
- 5) To what extent CQC Inspector [name one redacted], was involved in the North East Ambulance Service concerns raised by Whistleblowers in both 2020 and again in 2021?
- 6) Has CQC has reviewed [name one redacted] involvement and her actions, regarding concerns raised about the North East Ambulance Service NHS Foundation Trust. Given the revelations about her improper actions in the [name two redacted] whistleblowing case.
- 7) Could you confirm why no action was taken or an inspection was carried out in relation to the evidence within the two Audit One reports, which first came into the possession of the CQC in July 2020, as confirmed by the North East Ambulance Service NHS Foundation Trust?
- 8) Is the CQC in possession of a "Freedom To Speak Up" investigation, instigated by the North East Ambulance Service NHS Foundation Trust and conducted by [name three redacted] in 2020. The investigation looked into a number of allegations made by staff, these concerning the altering or the concealing of documents intended for inquest, bullying and harassment of staff and allegations of fraud at the North East Ambulance Service?

- 9) If the CQC is in possession of this document, what date did they receive this and from whom?
- 10) If the CQC is in possession of the [name three redacted] investigation into the misconduct, what action has it taken or does it intend to take in relation to its findings?
- 11) If the CQC is not in possession of this investigation, does it intend on exercising its regulatory powers and requesting this document from the North East Ambulance Service NHS Foundation Trust?

7. The CQC responded on 18 May 2023 as follows:

- It provided information falling within the scope of parts 1) and 7) of the request.
- It confirmed that it did not hold recorded information that provided an exact answer to parts 2) and 3) of the request but clarified the information it did hold that was relevant to the requested information.
- It confirmed that it held information falling within the scope of parts 4), 5) and 6) of the request but refused to provide it, citing section 40(2) (personal information) of FOIA as its basis for doing so.
- It stated that it did not hold information falling within the scope of parts 8), 9) and 10) of the request.
- It stated that part 11) was not a request for recorded information and therefore could not be answered under FOIA.

8. The complainant wrote to the CQC on 28 May 2023, requesting that it carry out an internal review of its decision to withhold the information requested in parts 4), 5) and 6) under section 40(2) of FOIA. The complainant also disputed the CQC's response to part 11) of their request.

9. The CQC provided the outcome of its internal review on 3 July 2023. It maintained its position that section 40(2) of FOIA applied to parts 4), 5) and 6) of the request. However, it revised its position in relation to part 11) of the request, stating that it did not hold the requested information at the time of the request.

Scope of the case

10. The complainant contacted the Commissioner on 12 July 2023 to complain about the way their request for information had been handled. In particular, the complainant is concerned about the CQC's reliance on section 40(2) of FOIA.
11. The Commissioner therefore considers that the scope of his investigation is to determine whether the CQC was entitled to rely on section 40(2) of FOIA to withhold the information requested in parts 4), 5) and 6) of the request.

Reasons for decision

12. Section 40(2) of FOIA allows a public authority to withhold information, that is the personal information of someone other than the requester, if disclosing the information would contravene any of the data protection principles¹ set out under UK data protection law.
13. One of the requirements of the data protection principles is that there is a "lawful basis" for the processing of any personal information (in this case, the "processing" in question being the personal information's disclosure under FOIA). If there is no lawful basis under data protection law², the personal information cannot be disclosed.
14. The Commissioner is satisfied that the withheld information in this case clearly relates to an identifiable individual (the "Inspector" referred to in the relevant parts of the request) and that this individual was named in the request. The information is therefore the Inspector's personal information. As the requestor is aware of the identity of the Inspector, it cannot be anonymised.
15. When information is disclosed under FOIA, it is considered to be disclosed to the world at large, rather than just to the individual requester. Therefore, when considering whether disclosure would contravene the data protection principles, the Commissioner must

¹ The data protection principles are set out in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

² The lawful bases for processing are listed under Article 6 of the UK General Data Protection Regulation.

consider whether publication of the personal information in question to the world at large would contravene the principles.

16. As the named Inspector does not appear to have consented to the publication of their personal information, the Commissioner considers that the only lawful basis for publication would be if publication were necessary to satisfy a legitimate interest.
17. The complainant has provided the Commissioner with a detailed submission of the reasons why the CQC has incorrectly engaged section 40(2) in their view. In summary, the complainant has argued that there is a legitimate public interest in disclosing the requested personal information to assist in the understanding of matters concerning patient safety and potential criminality. The complainant stated that the information requested relates to the action or inaction of the CQC in its capacity as the regulator of Health and Social Care providers.
18. The CQC accepts that there is a legitimate interest in general transparency. However, it considers this to be very limited on the following basis:
 - “The requester appears to be attempting to make a spurious link between this matter and a completely separate case;
 - CQC’s decisions in regard to this matter were made in MRMs [Management Review Meetings] and signed off by more senior colleagues than the Inspector [named in the request];
 - CQC’s actions in both this case and the [name three redacted] case are an organisational responsibility, with decisions being made within a framework of policies, governance procedures and organisational culture. Focusing on the actions of an individual Inspector is unlikely to significantly add to the public understanding of CQC’s actions.”
19. The Commissioner accepts that there is a legitimate interest in disclosure and has therefore gone on to consider whether this is necessary in order to meet the legitimate interest.
20. The complainant has argued that there is a pressing social need for disclosure of the withheld information as neither the wider public nor families exposed to the alleged malpractices of the North East Ambulance Service NHS Foundation Trust, have received sufficient assurances from the CQC and others to date.
21. The complainant stated that there is a pressing social need for the CQC to be transparent and accountable for the services it provides to the wider public, and the safety of the public is an important issue.

22. The complainant also argued that there is need for the wider public to know whether the CQC failed to act as the regulator, in relation to matters that they state were recorded as a crime by the Police. In addition, the complainant questioned whether the CQC adhered to its own guidelines and statutory obligations and revealed or dispelled public concerns over potential malfeasance or misfeasance in a public office.
23. The CQC considers that the public interest regarding its role in this matter has been met by the publication of its inspection report and through other information it has released under FOIA, in response to this request and others, which it says has been reported through the media.
24. In determining whether disclosure is necessary, the Commissioner has considered the requested information and whether the disclosure under FOIA is necessary to achieve the legitimate interests above, or whether there is another way to address them, that would interfere less with the privacy of individuals.
25. The Commissioner notes that the complainant's concerns are centred on the actions of the particular Inspector named in the request. The Commissioner is therefore satisfied that there are no less intrusive means of achieving the legitimate aims identified than to disclose the information requested.
26. The Commissioner must therefore balance the legitimate interests in disclosure against the Inspector's interests or fundamental rights and freedoms.
27. The complainant has argued that the legitimate interests in this case clearly outweigh the interests and rights of the individual in question, particularly given the gravity of the events in question and the risks to public safety.
28. The complainant has stated that the name of the Inspector in question is already in the public domain and that this information is already known to a significant number of people. The complainant argued that public officials must expect a high degree of scrutiny about their functions in office and it is particularly important that elected public officials are held accountable to the electorate.
29. The complainant stated that there is now an established expectation of transparency in government policy and the actions of public authorities, which will mean that any initial assumptions of privacy will be outweighed by the need to be open and accountable.
30. The CQC has explained that the withheld information relates to the Inspector's professional work as an employee of a public body. However,

it stated that CQC Inspectors have a reasonable expectation of confidentiality.

31. The CQC explained that when an Inspector is conducting an inspection, they will act in a public-facing capacity – for example by meeting with people who use the services the CQC regulate. The Inspectors may also correspond directly with people who raise concerns about those services and with other members of the public who contact the CQC. However, the CQC has stated that it does not publish Inspectors names in their inspection reports or press releases.
32. The CQC stated that it did consult with Inspectors a few years ago about whether it should publish their names in inspection reports. The feedback it received from colleagues and their Trades Union was that the CQC should not publish their names in inspection reports for several reasons which included:
 - “Unfairness of Inspectors being seen to be personally responsible for regulatory decisions where they were not the ultimate decision maker (such as those explained above in relation to MRMs);
 - Risk of unwarranted and unfair personal criticism, in particular on social media;
 - Personal risk to Inspectors where they live in the communities served by the care services that we regulate (e.g., risk of safety in cases where CQC takes an action which may be unpopular with some local people).”
33. The CQC stated that it does consider every FOIA request on a case-by-case basis, but its starting position is that it does not disclose the name of CQC Inspectors under FOIA unless there is an exceptional public interest to be served by doing so.
34. The CQC has explained that in this case, there appears to be an attempt to focus on the named Inspector’s involvement in this matter which, in the CQC’s view, can only be for the purpose of directly criticising the named Inspector and/or to criticise the CQC on the basis of the named Inspector’s involvement.
35. The CQC has confirmed that it has not asked the named Inspector for their consent to disclose their personal data.
36. In making the decision not to consult with the named Inspector, the CQC stated that it considered that disclosure would, in any case, serve little public interest and that the consultation, in itself, would be stressful to the named Inspector in light of distressing social media attention that they had received following the whistleblowing case.

37. The CQC considers that disclosure of the withheld information would be very likely to result in further social media attention being focussed on the named Inspector.
38. The CQC has stated that the named Inspector was subject to very distressing social media attention following publication of the Employment Tribunal decision in the whistleblowing case and has already been subject to social media posts attempting to link them to the NEAS case.
39. The CQC considers that disclosure of the withheld information would have a very significant impact upon the privacy of the named Inspector and is likely to cause them significant distress. It would also be likely to be a breach of the CQC's duty of care as the employer of the named Inspector.
40. The Commissioner notes the complainant's argument that there is a significant public interest in patient safety and potential criminality. The Commissioner also considers there is some legitimate interest in the public being able to scrutinise whether the CQC has taken action in a particular case.
41. The Commissioner has also considered information in the public domain reporting on the role of the CQC and the action it takes including the publication of its inspection report, the release of other information through FOIA requests, in response to this request and information reported in the media.
42. However, the Commissioner is conscious that disclosure under FOIA is disclosure to the world at large. In this case, the Commissioner is satisfied that it would not be within the reasonable expectations of the named Inspector for their personal information to be disclosed to the wider world in response to an FOIA request. Indeed, the individual is likely to have a strong expectation of confidentiality regarding their information. The Commissioner is also conscious of the likely consequence of harm and distress to the named Inspector as a result of the disclosure of the withheld information.
43. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the Inspector's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
44. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent. Therefore, he

has decided that the withheld information is exempt under section 40(2) of FOIA.

Procedural matters

Section 10 – time for compliance

45. Section 10(1) of the FOIA states that a public authority shall respond to information requests promptly and, in any event, by no later than 20 working days from receipt.
46. The Commissioner notes that the time taken for the CQC to respond to the request for information exceeded 20 working days. The CQC recognised and apologised for this breach in its internal review response. The Commissioner has therefore recorded a breach of section 10 of FOIA against the CQC as a result.

Other matters

Internal review request

47. The Commissioner notes that the time taken for the CQC to respond to the internal review request exceeded 40 working days.
48. As explained in the ICO's guidance³, internal reviews should usually be completed within 20 working days. However there may be circumstances where public authorities require more time to complete an internal review, for example to address complex issues, consult with third parties or consider substantial amounts of information.
49. In these circumstances, this should be no more than an additional 20 working days, unless there are legitimate reasons why a longer extension is necessary.

³ [Request handling, Freedom of Information – Frequently Asked Questions | ICO](#)

Right of appeal

50. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

51. 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.
52. 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

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