

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2024

Public Authority: NHS Resolution
Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested information relating to a claim they made to NHS Resolution. NHS Resolution has refused to disclose the requested information under section 40(1) of FOIA on the basis that it is the complainant's own personal data.
2. The Commissioner's decision is that NHS Resolution was entitled to rely on section 40(1) of FOIA. However, he has recorded a procedural breach of section 17(1) of FOIA.
3. The Commissioner does not require NHS Resolution to take any steps as a result of this decision notice.

Background

4. The Commissioner understands that NHS Resolution managed a claim made by the complainant against their GP practice.
5. NHS Resolution explained that its "role is to manage such claims on behalf of the GP practice as part of the 'GP Indemnity Scheme'. Although NHS Resolution is not an insurer, this is probably the easiest point of comparison for understanding NHS Resolution's role."
6. The Commissioner understands that the complainant raised some concerns with NHS Resolution, which it investigated under its Complaint Policy. It did not uphold the complainant's complaint.

Request and response

7. On 7 March 2024, the complainant submitted the following request for information to NHS Resolution:

“1. SAR – Any and all details, data, memos, emails, letters that are held about me or mention my name by NHS Resolution, Standish Medical Practice and Hempsons Solicitors and the related, ongoing claim involving NHS Resolution, Standish Medical Practice and Hempsons Solicitors.

2. FOI – Any and all internal and external data, memos, emails, letters that relate to the handling of my ongoing claim specifically by [names of individuals redacted] (only excluding materials that are subject to legal privilege).”

8. NHS Resolution responded on 11 April 2024. The Commissioner understands that NHS Resolution dealt with both parts of the request as a subject access request (SAR) under data protection legislation (the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA)). It provided the complainant with some information, but refused to provide the remainder on the basis that it was subject to Legal Professional Privilege (LPP) and therefore exempt from disclosure under the LPP exemption within the DPA.
9. The complainant wrote to NHS Resolution on 18 April 2024, complaining that it had not dealt with the FOI aspect of their request and stating that NHS Resolution “will need to work to identify any and all materials that aren’t subject to an absolute or qualified exemption under FOIA.”
10. NHS Resolution responded to the complainant on the same day, confirming that:

“[the complainant’s] request was considered under Article 15 of the General Data Protection Regulation and the Data Protection Act 2018 (DPA).

All the internal and external data, emails and letters you requested relating to your personal data relating to your claim has been disclosed to you. NHS Resolution’s approach to searching information on data subjects would be to approach the relevant functions to search through their case management database. In your case, the scope of our search would only include Claims Management. Claims Management would search through database as this is the most likely place where correspondence will be held. The claims team have confirmed

that there are no other information held or filed that falls under the FOI legislation.”

11. On 18 April 2024, the complainant wrote to NHS Resolution again raising concerns about it not responding to their FOIA request. The complainant also stated that:

“There are tyres [sic] and formats of information that I believe the [sic] you haven't considered;

- 1) Hand written or typed notes between NHS Resolution employees internally about my case and my dispute with Standish Medical Practice.
- 2) Minutes of any meetings, informal or formal, held to discuss my case and my dispute with Standish Medical Practice that don't enjoy legal privilege.
- 3) Content logs of telephone calls made internally or externally regarding my case and my dispute with Standish Medical Practice enjoy legal privilege.
- 4) Any emails internally or externally to NHS teams or NHS agencies that don't enjoy legal privilege.
- 5) I'm yet to receive any structured, compiled disclosure, as far as I can discern from the current SAR it hasn't been properly considered or treated as BOTH a SAR and FOI request.
- 6) I want to be able to be presented with the funding and fee charging arrangements for the panel of lawyers and solicitors who have contracts with NHS Resolution.”

12. On 19 April 2024, the complainant followed up their email of the 18 April 2024, clarifying that:

“The FOI Request consolidation/clarification as it relates to the original request made on 07 March 2024 now in full;

There are types and formats of information that I believe that you haven't considered as part of the FOI Request as you have only treated my request as a SAR;

- 1) Hand written or typed notes between NHS Resolution employees internally about my case and my dispute with Standish Medical Practice.

- 2) Minutes of any meetings, informal or formal, held to discuss my case and my dispute with Standish Medical Practice that don't enjoy legal privilege.
- 3) Content logs of telephone calls made internally or externally regarding my case and my dispute with Standish Medical Practice that don't enjoy legal privilege.
- 4) Any emails internally or externally to NHS teams or NHS agencies that don't enjoy legal privilege.
- 5) I'm yet to receive any structured, compiled disclosure, as far as I can discern from the current SAR it hasn't been properly considered or treated as BOTH a SAR and FOI request. I require a structured and not duplicated disclosure response that specifically deals with FOI and the related material.
- 6) I want to be able to be presented with the funding and fee charging arrangements for the panel of lawyers and solicitors who have contracts with NHS Resolution.
- 7) Any and [sic] call internal case management notes, either those held electronically or manually in hard copy, made by NHS Resolution employees: [names of individuals redacted] related to my case and dispute with Standish Medical practice that don't enjoy legal privilege.

NB. The phrase: 'that don't enjoy legal privilege' relates to and you are aware, or at least [sic] should be, that Section 42 FOIA is only a qualified exemption under the act and I would point out that as such efforts to identify, collect, collate materials should be conducted even if you attempt to rely upon a Section 42 exemption. There are significant instances where a Section 42 exemption won't be qualified or sufficiently engaged, as the nature of certain materials won't necessarily fall within the allowed exemption criteria of what is legally privileged.

I wish to stress that [name redacted] was made aware of this FOI Request over a month ago on the 07 March 2024, previously attached screenshots confirm this. What I do require, in addition to the explicit and obvious FOI Request, is that you consider more widely why this FOI Request was essentially ignored until very recently and only then at my insisting that it be revisited. Particularly in the context of the FOI Request being difficult to miss or catch owing to the fact that I did make repeated reminders of it to [name redacted] and that [name redacted] is

part of a team or department within NHS resolution which deals with both FOI and SAR activities.”

13. Following an internal review, NHS Resolution wrote to the complainant on 14 May 2024. It stated that it had revisited the “FOI request” portion of the complainant’s request, and had identified a limited amount of additional, non-privileged information which it enclosed with the response.
14. NHS Resolution stated that parts 1) to 4) and part 7) of the request dated 19 April 2024 were asking for the complainant’s own personal data. NHS Resolution therefore stated that these parts of the request were exempt under section 40(1) of FOIA and should have been treated as a SAR, which NHS Resolution had done.
15. In response to part 5) of the request dated 19 April 2024, NHS Resolution stated:

“We are unclear what you mean by a “structured, compiled disclosure”. NHS Resolution has complied with its legal obligations to provide you with a copy of the information it holds in a commonly used electronic format (PDF) and provided you with a copy of additional information to help you understand the information it holds. There is no legal obligation under data protection law (or under FOIA) to provide information in a particular structured format.”
16. In response to part 6) of the request dated 19 April 2024, NHS Resolution confirmed that it held information relevant to this part of the request. It confirmed that it published the requested information and provided the complainant with a link to access it.

Scope of the case

17. The complainant contacted the Commissioner on 23 May 2024 to complain about the way their request for information had been handled.
18. The complainant is dissatisfied with NHS Resolution’s response to their request, as they continue to consider it an FOIA request and therefore that the relevant exemption for any legally privileged information is that under section 42 of FOIA. In particular, they are concerned that NHS Resolution has not dealt with part 2) of the request dated 7 March 2024 under FOIA. In addition, they are concerned that NHS Resolution did not also consider FOIA and the section 42 exemption to the information withheld under the LPP exemption of the DPA and the UK GDPR.

19. During the Commissioner's investigation, NHS Resolution confirmed that it is withholding part 2) of the request dated 7 March 2024, and parts 1) to 4) and part 7) of the request dated 19 April 2024 under section 40(1) of FOIA. It has also confirmed that it is not relying on section 42 of FOIA to withhold any of the requested information.
20. The Commissioner considers that the scope of his investigation is to determine whether NHS Resolution was entitled to rely on section 40(1) of FOIA when refusing to disclosing the information requested in part 2) of the request dated 7 March 2024, and parts 1) to 4) and part 7) of the request dated 19 April 2024.

Reasons for decision

Section 40 personal information

21. Section 40(1) of FOIA provides that personal information is exempt from disclosure under FOIA if it is the personal data of the requester.
22. Furthermore, because a disclosure under FOIA is not a disclosure only to the requester, but to the world at large, the Commissioner's guidance is clear that a requester's own personal data must not be disclosed under FOIA.¹ Instead, public authorities must handle requests for information that constitute the requester's own personal data as a SAR under data protection legislation. This is the case even where the requester has explicitly asked for the information under FOIA.

Is the information the complainant's personal data?

23. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
25. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or

¹ [What do FOIA and the EIR say about requests for personal information? | ICO](#)

more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.

26. In this case, the complainant is clearly identified in relation to the data. This is because the requester has requested information specifically in relation to themselves, specifically "my ongoing claim" and "my case and my dispute with Standish Medical Practice".
27. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
28. The Commissioner's guidance² on what constitutes personal data states:

"In many cases data may be personal data simply because its content is 'obviously about' an individual. Alternatively, data may be personal data because it is clearly 'linked to' an individual as it is about his or her activities and you are processing it for the purpose of determining or influencing the way in which that individual is treated. Data may also be personal data if it is biographically significant or has a particular individual as the focus."
29. In this case the requested information relates to the individual's legal complaint against their GP practice. Any information NHS Resolution holds within the scope of the requests could only have been created in relation to that ongoing claim. This legal case is intrinsically linked to the complainant; it is not possible to separate information about the case from information about the complainant. The processing of that information will affect the legal case and therefore, by extension, determine or influence the way in which the complainant is treated. This is the case even if the complainant is not named in the information itself.
30. The Commissioner is therefore satisfied that the information requested under part 2) of the request dated 7 March 2024 and parts 1) to 4) and part 7) of the request dated 19 April 2024 is clearly linked to the complainant and is therefore likely to be their personal data. He is therefore satisfied that the information is exempt from disclosure under section 40(1) of FOIA, and that it was correct for NHS Resolution to deal with the requests under data protection law.

² [What is the meaning of 'relates to'? | ICO](#)

31. Section 40(1) is an absolute exemption; there is no requirement for the Commissioner to consider the balance of public interest, nor is he required to consider whether or not the complainant would be happy to have their personal data published to the world at large. If the exemption applies, the information is not available via FOIA.
32. The Commissioner therefore finds that section 40(1) of FOIA is engaged in respect of the information requested in part 2) of the request dated 7 March 2024, and parts 1) to 4) and part 7) of the request dated 19 April 2024.
33. The Commissioner is aware that the complainant is of the view that NHS Resolution should have considered FOIA and, in particular, the exemption under section 42 of FOIA in relation to the information withheld under the LPP exemption of the DPA. However, this is not applicable in this case. As explained above, the Commissioner considers it to be correct that the requests were dealt with under data protection law instead of FOIA.

Procedural matters

Section 17(1) – refusal of request

34. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
35. In this case NHS Resolution failed to specify which exemption under FOIA it was relying on to withhold the information requested in part 2) of the request dated 7 March 2024. The Commissioner notes that NHS Resolution accepted this oversight in its submissions to him.
36. The Commissioner has made a note of this breach for monitoring purposes.

Other matters

Further complaints

37. The Commissioner understands that the complainant is also concerned that NHS Resolution does not have the correct process in place for dealing with FOIA.

38. In addition, the complainant is concerned that they have not received the full disclosure of all the information held by NHS Resolution because the requests were only dealt with as a SAR, and that they therefore have only received the SAR material.
39. The Commissioner is satisfied that NHS Resolution has the correct process in place to consider whether requests should be handled as a SAR under data protection legislation, or as a request under FOIA. In this case, NHS Resolution handled part 6) of the request dated 19 April 2024 under FOIA, and both parts of the request dated 7 March 2024, and parts 1) to 4) and part 7) of the request dated 19 April 2024 as SAR. As explained above, the Commissioner is satisfied that this was the correct way to deal with this request.
40. If a requester is asking for their own personal data, the request should always be handled as a SAR. If a complainant presses to have the matter looked at under FOIA, the information will always be exempt under section 40(1). No other exemption needs to be considered.
41. It is not the role of the Commissioner (in his capacity as the regulator responsible for looking at FOIA complaints) to comment on whether NHS Resolution handled the SAR appropriately, including whether all the information has been disclosed and whether it applied any exemption under data protection legislation correctly. If the complainant has such concerns, this can be brought to the Commissioner separately, which the Commissioner understands the complainant has done.

Right of appeal

42. 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

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF