

Freedom of Information Act 2000 (Section 50)

Decision Notice

29 August 2006

Public Authority: Doncaster and Bassetlaw Hospitals NHS Foundation Trust

Address: Doncaster and Bassetlaw NHS Trust
Doncaster Royal Infirmary
Armthorpe Road
Doncaster
DN2 5LT

Summary Decision

1. The complainant requested information contained within a report following an investigation at the public authority. The request was refused as the information had been destroyed in line with records management at the time. The Commissioner is satisfied that the public authority do not hold the information requested and did not hold it at the time the request was made.

The Commissioner's Role

2. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

3. On 1 February 2005, the complainant requested the following information from the public authority:
4. *"I am writing to request copies or an opportunity to review certain pages of an original Doncaster Royal Infirmary file relating to the treatment and sudden death of my late wife... The file relates to the*

hospitals own in house investigation following the coroners inquest... The pages are, the ones which list the individuals responsible for the investigation and their position within the NHS, and also the pages which will detail and illustrate their procedures [sic] and final conclusions."

5. On 2 March 2005, the public authority responded to the request, refusing to supply the information as it was personal data. They cited the section 40 exemption. The letter also goes on to say that the investigation report had been destroyed as five years had passed.
6. The complainant wrote to the public authority on 22 November 2005 complaining about the application of section 40 and for the purposes of the Act, this letter acts as a request for internal review.
7. The public authority responded to the complainant on 3 January 2006 stating that they do not hold the information requested. This constituted the outcome of the internal review.

The Investigation

Scope of the case

8. On 29 December 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That the information had not been provided
 - That the public authority had stated that the information was exempt under section 40 of the Data Protection Act

Chronology of the case

9. A Complaints Officer wrote to the complainant on 11 May 2006 on behalf of the Commissioner and set out what appeared to be the main issues in this case. It was confirmed that section 40 of the Freedom of Information Act had been applied. As the complainant had stated within correspondence to the public authority that they had incorrectly applied the Data Protection Act as it does not relate to the deceased, the Complaints Officer pointed out that it seemed likely that the section 40 exemption had been applied as the request was for personal information of individuals within a report rather than that of his wife.
10. The Complaints Officer further pointed out that it seemed that the information was no longer held by the public authority.
11. Also on 11 May 2006, the Complaints Officer wrote to the public

authority asking them to clarify their position and pointing out the failure to comply with section 17 of the Act in relation to the Refusal Notice provided.

12. The public authority responded to the Information Commissioner's Office in detail on 12 June 2006. This letter confirmed that the information was not held by the public authority as it had been destroyed in line with the records management policy in place at the time.
13. With regard to the breaches of section 17, the letter explained that the particular department had been working out of temporary accommodation at the time that the Refusal Notice was drafted and that access to the relevant database was not possible. This resulted in letters being drafted without standard paragraphs such as those required by section 17. Copies of the standard letters currently used by the public authority including the requisite information regarding complaints and the right to complain to the Information Commissioner have since been provided to demonstrate that they are usually applied.
14. During a telephone conversation on 16 June 2006 between the public authority and the Complaints Officer, the public authority stated that it was likely that the section 40 exemption had been incorrectly applied but that the information is no longer in existence and could not have been supplied in any event. It was thought by the public authority's representative that the records management policy in place at the time this information was destroyed was to keep such files for five years. It has since been changed and such files are now kept for ten years. The Complaints Officer requested a copy of the previous policy.
15. A further telephone conversation took place on 21 June 2006 during which the public authority confirmed that they had been unable to locate a copy of the previous records management policy. It seemed that records at the time were either destroyed after five or seven years but in any event this information had been destroyed prior to the Act coming into force and the request being made.
16. Within a letter of 26 June 2006 to the Information Commissioner's Office, the public authority provided a copy of their current records management policy and confirmed that records were previously destroyed after seven years. Therefore, the information requested would have been destroyed in 2004.

Findings of the case

17. Following investigation of the complaint, the Commissioner is satisfied that the information requested by the complainant is no longer held by the public authority.
18. The application of section 40 was not considered any further as the

information could not be provided in any event and the public authority have conceded that section 40 was applied incorrectly.

Analysis

19. The Commissioner has considered the public authority's response to the complainant's request for information.

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

The public authority responded to the complainant's request for information and confirmed that they do not hold the information requested this is in line with section 1 of the Act as above.

20. **Section 17 – Refusal Notice**

Section 17 stipulates the contents of a Refusal Notice. The notice should state that the information is exempt, specify the exemption and state (unless otherwise apparent) why the exemption applies. The public authority conceded that the Refusal Notice provided in this instance was not fully compliant with the Act.

21. A Refusal Notice must also contain particulars of any procedure provided for dealing with complaints and contain particulars of the right conferred by section 50, to complain to the Information Commissioner. These details were omitted from the Notice provided to the complainant on 2 March 2005. The Commissioner therefore considers that the public authority breached section 17 of the Act.

The Decision

22. The Commissioner's decision is that the public authority did in general deal with the request for information in accordance with the Act, but procedurally failed to deal correctly with the refusal of the request.

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29th day of August 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**