

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 23 April 2007

Public Authority: Rotherham NHS Primary Care Trust
Address: Oak House
Moorhead Way
Bramley
Rotherham
South Yorkshire
S66 1YY

Summary

The complainant and his partner made a series of requests to the public authority under the Freedom of Information Act 2000 ("the FOI Act"), and complained to the Commissioner about the public authority's response to two of these requests. The complainant requested the minutes of a meeting that he alleged had taken place between employees of the public authority, Rotherham Metropolitan Borough Council and South Yorkshire Police in October 2002. The public authority refused to confirm or deny whether it held this information, citing section 40(5). The complainant also requested information pertaining to the identity of the line manager of an employee of the public authority. Although the public authority provided him with information in response to this request, the complainant questioned the accuracy of this information and asked the Commissioner to investigate this. As the FOI Act does not give the Commissioner powers to investigate the quality of information held or provided by a public authority, he did not make a decision on the quality of the information provided. The Commissioner did, however, consider whether the public authority provided the complainant with the information it held in relation to his request, in compliance with section 1. In regard to the first of the requests the Commissioner concluded that section 40(5) did not apply, and that the public authority should have informed the complainant whether it held the information requested or not. In failing to do so, it contravened the requirements of section 1(1)(a) of the FOI Act. In regard to the second request the Commissioner was satisfied that the public authority provided the applicant with the information it held in relation to the information he had requested. However, the Commissioner also found that the public authority did not comply with section 10 of the FOI Act, as it did not respond to these requests within 20 working days. In consequence, the complaint is partially upheld.

The Commissioner's Role

1. The Commissioner's duty 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 FOI Act. This Notice sets out his decision.

2. The Request

2. In a series of letters, dated 24 January 2005, 23 March 2005, 28 April 2005, 3 May 2005 and 26 July 2005 the complainant and his partner made a series of information requests to the public authority, under both the FOI Act and the Data Protection Act 1998 (DPA). The public authority responded to all of these requests on 11 November 2005. A full list of all the requests has not been reproduced in this Notice as the Commissioner has only investigated two of them, and he therefore believes that it is not appropriate to list all the requests that the complainant and his partner made. The two requests which have been considered are listed in the following paragraphs.
3. The first of the requests the Commissioner considered was made in a letter dated 28 April 2005, when the complainant's partner requested,

“minutes of a meeting held on October 2nd 2002 which was attended by South Yorkshire Police officers together with [...] Acting Director of Rotherham Social Services, [...] I.T. Manager, Strategic Services, Rotherham Social Services and [Mr A], Director of the Learning Disability Service in Rotherham.”
4. The second request is contained in a letter dated 3 May 2005, and is made up of three elements:
 - (i) “Which R.P.C.T. [Rotherham NHS Primary Care Trust] employee was supervising [Mr A] when the decision was made to contact the Police making allegations against [...] in October 2002?”
 - (ii) “Did this same R.P.C.T. employee play any part whatsoever in the process of short listing for interview and subsequent appointment of [Mr A] to his present post? If so, please specify precisely what role was undertaken?”
 - (iii) “Which R.P.C.T. personnel were jointly responsible for interviewing [Mr A] and recommending his promotion in March 2002?”
5. On 11 October 2005 the public authority made a substantive response to these, and several other requests.
6. In regard to the request listed at paragraph 3 above the public authority cited section 40(5) and refused to confirm or deny whether it held the information requested. In doing so it explained that, “to do otherwise could communicate to you personal information about the named individuals (i.e. whether or not they attended a meeting on 2 October 2002, which was also attended by the police) and would therefore contravene the first data protection principle to process personal data fairly.”
7. In the same letter the public authority provided the following information in relation to the request listed at paragraph 4:
 - (i) “[Ms B] was supervising [Mr A] in October 2002.”

- (ii) “[Ms B] was on the short-listing panel and the selection panel as she would become the line manager on the PCT’s behalf of whoever was appointed. This is in line with the general policy that when recruiting, the person who will become the manager of the successful applicant will be on both the short-listing and selection panels.”
- (iii) “The PCT did not exist as a statutory body prior to April 2002. Prior to this [Ms B] represented Rotherham Priority Health Service Trust. As outlined above [Ms B] was on the selection panel that interviewed [Mr A]. The remainder of the selection panel consisted of Council employees. This was part of an appointment process run by the Council.”

It is the Commissioner’s opinion that this letter constituted the public authority’s refusal notice. This letter informed the complainant of his right to an internal appeal.

- 8. In a letter to the public authority, dated 18 November 2005, the complainant wrote, “One of the baffling claims made in the response I received from you relates to [Ms B]’s claimed role as supervisor of [Mr A] following his appointment to the Directorship of the amalgamated Learning Disability Service.” He went on to question whether Ms B had executive powers, which he believed would have been necessary to act as Mr A’s line manager. He also questioned the public authority’s decision to refuse to confirm or deny whether it held a copy of the minutes of the alleged meeting on the 22 October 2002. Having considered this letter the Commissioner has formed the view that these comments were a request for an internal review.
- 9. In a letter dated 28 December 2005 the public authority responded. In regard to the minutes of the alleged meeting it informed the complainant that it would need to seek the consent of the individuals named in the original request in order to answer the request, but that before it did that it would need his consent to identify him to the individuals it was seeking consent from. It did not refer to the points he had made in regard to the line management of Mr A.
- 10. The complainant and his partner provided consent to the public authority on 5 January 2006.
- 11. Following several other pieces of correspondence, in which the public authority failed to issue a further substantive response, the complainant contacted the Commissioner.

The Investigation

Scope of the case

- 12. The complainant contacted the Commissioner on 12 June 2006 and asked the Commissioner to investigate his complaint.

13. Although not specifically requested to do so by the complainant, the Commissioner has also considered the procedural aspects of the public authority's handling of the request for information.

Chronology

14. The Commissioner contacted the public authority on 25 October 2006 to notify it that he had received a complaint. In this letter he also asked it to provide him with relevant information relating to this complaint.
15. The public authority responded on 22 November 2006 and provided the information requested.
16. The Commissioner wrote to the complainant on 8 January 2007 to clarify which of his, and his partner's requests, were to be investigated. After receiving some clarification from the complainant it was decided to investigate the two requests listed at paragraphs 3 and 4 above. In a letter dated 30 January 2007 the Commissioner informed the complainant of the scope of his investigation.
17. The Commissioner informed the public authority on 30 January 2007 that he was investigating its response to two of the complainant's and his partner's requests. He asked the public authority for its reasoning behind the application of section 40(5), and for further information regarding the line management of Mr A.
18. The complainant responded to the Commissioner's letter on 1 February 2007 and provided some further information in regard to the second of his requests (about the line management of Mr A). The complainant did not raise any concerns regarding the scope of the Commissioner's investigation.
19. The public authority responded on 1 March 2007, and provided the information requested.
20. The Commissioner contacted the public authority again on 8 March 2007 seeking clarification on some issues.
21. The public authority responded on 22 March 2007.

Analysis

Procedural matters

Section 1(1)

22. The complainant questioned the veracity of the information provided to him in response to his requests regarding the line management of Mr A. As the FOI Act does not give the Commissioner powers to investigate the quality or accuracy of information held or provided by a public authority, he has not done so. He has, however, investigated whether the complainant was provided with the information which was requested, in compliance with section 1(1).

23. Section 1(1) states –

“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.”

24. After consulting with the public authority, and considering all the information provided, the Commissioner is satisfied that the public authority has provided the complainant with the information it held regarding the line management of Mr A. Therefore, in relation to this aspect of the complaint, the Commissioner has formed the view that the public authority has complied with section 1(1).

25. The full text of section 1 can be found in the Legal Annex at the end of this Notice.

Section 10(1)

26. The Commissioner has also considered whether the public authority has complied with its obligations under section 10 of the FOI Act.

27. Section 10(1) requires a public authority to comply with section 1(1) promptly, and no later than 20 working days after the receipt of the request.

28. The public authority did not respond to the complainant's requests of 28 April 2005 and 3 May 2005 until 11 October 2005.

29. The full text of section 10 can be found in the Legal Annex at the end of this Notice.

Exemptions

Section 40(5)

30. The public authority has refused to confirm or deny whether it holds the minutes of the alleged meeting on 2 October 2002 and has cited the exemption listed at section 40(5)(b)(i) of the FOI Act.

31. Section 40(5)(b)(i) provides an exemption from the duty to confirm or deny whether information is held. This exemption is engaged in circumstances where the information requested contains the personal data of an individual other than the applicant, and the duty to confirm or deny would result in a breach of the DPA.

32. Where a public authority has relied on an exemption which entails a refusal to confirm or deny whether information is held, the Commissioner needs to ensure that his Decision Notice does not give any indication as to whether or not

information is held by the public authority. As a consequence, it is not always possible for him to comment in great detail on the reliance by a public authority on the exemption concerned, as to do so may provide an indication whether the requested information is held.

33. The Commissioner would also emphasise that this part of his decision relates solely to the issue of whether the public authority should have confirmed or denied whether it held minutes of the alleged meeting. The decision does not relate to the issue of, if the minutes were held, whether those minutes should have been disclosed to the complainant.
34. In this instance the public authority believed that confirming or denying whether it held a copy of the minutes of the alleged meeting would be a breach of the first principle of the DPA. It stated that to do so would provide information about the individuals named in the request, in as much as it would confirm whether or not they had attended a meeting with South Yorkshire Police on 2 October 2002, and that it felt that it would be unfair to disclose this to the public and therefore in breach of the first data protection principle.
35. In general terms, the Commissioner believes that if a public authority confirmed or denied whether it held the minutes of a meeting, this would not amount to unfair processing of the personal data of the attendees. He would only form the view that it was unfair if he was provided with evidence which led him to believe that one of the individuals concerned would suffer unwarranted detriment by such an action. In this case the Commissioner has not been provided with any such evidence, and therefore he believes that if the public authority were to confirm or deny whether it held the information in question, this would not result in a breach of the first principle of the DPA, nor any other of the data protection principles. Therefore the Commissioner has formed the view that section 40(5)(b)(i) is not engaged.
36. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

The Decision

37. The Commissioner's decision is that the public authority dealt with the request listed at paragraph 4 in accordance with the requirements of section 1(1) of the FOI Act in that it provided the complainant with the information it held in regard to the line management of Mr A.
38. However, the Commissioner has decided that the following elements of the request were not dealt with in accordance with the requirements of the FOI Act:

The public authority did not deal with the request for information listed at paragraph 3 in accordance section 1(1)(a) of the FOI Act, as it incorrectly applied section 40(5)(b)(i) and refused to confirm or deny whether it held a copy of minutes of the alleged meeting on 2 October 2002.

The public authority breached section 10(1) as it failed to issue a refusal notice within the statutory time limit prescribed by the FOI Act.

Steps Required

39. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOI Act:

Confirm or deny whether the requested information is held and, if held, communicate it to the complainant or, if it believes an exemption applies, refuse to do so and issue a refusal notice under section 17 of the FOI Act.

40. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

41. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

42. In responding to the complainants request for an internal review the public authority failed to provide a substantive response. The Commissioner has formed the view that in failing to do so the public authority did not comply with the Section 45 code of practice.

43. Section VI of the Section 45 code of practice states that, "each public authority should have a procedure in place for dealing with complaints...in relation to its handling of requests for information." Although the code does not specify a time limit within which an internal review should be carried out, it is the Commissioner's view that the spirit of the code is that internal reviews should be carried out as soon as possible.

Failure to comply

44. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the FOI Act and may be dealt with as a contempt of court.

Right of Appeal

45. 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 23rd day of April 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Section 1

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority –
- (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
- (4) The information –
- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
 - (b) which is to be communicated under subsection (1)(b),
- is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 10

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for

the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.

(5) Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.

(6) In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Section 40

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
- (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."
- (4)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."
- (5)** The duty to confirm or deny-
- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."
- (6)** In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."
- (7)** In this section-
- "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act.