

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 16 April 2007**

**Public Authority:** Calderdale & Huddersfield NHS Foundation Trust  
**Address:** Huddersfield Royal Hospital  
Lindley  
Huddersfield  
HD3 3EA

### Summary

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The complainant, and his wife, requested information about a doctor who had previously worked for the public authority. Specifically he asked whether the doctor had been carrying out a six monthly rotation as part of her training for General Practice, whilst working in Huddersfield Royal Infirmary's Haematology Department in 2003. The public authority refused to provide this information, claiming that the information was exempt from disclosure under section 40 of the Freedom of Information Act 2000 ("the FOI Act"). The public authority confirmed to the Commissioner that it believed the release of this information would be in breach of the principles of the Data Protection Act 1998 (DPA). After considering the submissions of both parties the Commissioner concluded that the release of this information would not be a breach of the DPA, and that therefore section 40(2) was not engaged. The Commissioner also decided that the public authority was in breach of section 17, as the initial refusal notice was inadequate. Consequently, the complaint was upheld.

### The Commissioner's Role

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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.

### The Request

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2. The complainant has advised that on 7 November 2006 the following information was requested from the public authority in accordance with section 1 of the FOI Act:

"The information we seek is to ascertain if [named doctor] was carrying out one of her six monthly rotations in the Department of Haematology as part of her training

for General Practice while employed by yourselves at Huddersfield Royal Infirmary.”

3. In a letter dated 30 November 2006 the public authority wrote to the complainant and stated that it was under no obligation to provide information about any member of staff to members of the public. The Commissioner has formed the view that this letter constitutes the public authority's initial refusal notice.
4. On 11 December 2006 the complainant wrote to the public authority asking for an internal review of this decision.
5. The public authority responded in a letter dated 12 December 2006 and cited the exemption listed at section 40, as it believed that the disclosure of this information would be a breach of the DPA. At this point the public authority informed the complainant of his right to request for an internal review and to complain to the Commissioner.
6. The complainant requested a further review of this decision by way of a telephone call to the public authority on 22 December 2006.
7. In a letter dated 10 January 2007 the public authority informed the complainant that it had conducted an internal review, and that the decision to withhold the information in question under section 40 was upheld. The public authority advised the complainant of his right to complain to the Information Commissioner.

## **The Investigation**

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### **Scope of the case**

8. The complainant contacted the Commissioner on 16 January 2007. The complainant asked the Commissioner to consider whether the refusal to disclose the information in question was appropriate.
9. Although the complainant did not raise the point, the Commissioner has also considered whether the public authority breached section 17 when issuing the initial refusal notice by not providing either details of the exemptions it was relying upon or details of the complainant's right to appeal and to complain to the Commissioner.

### **Chronology**

10. The Commissioner wrote to the public authority on 19 February 2007 and asked for a copy of the withheld information. He also asked for clarification about which part of section 40 the public authority was seeking to rely upon, and for details of its reasoning in applying this exemption.
11. The public authority replied to the Commissioner on 27 February 2007 and informed him that it believed that this information was exempt under section 40(2)

and section 40(3)(a)(i) of the FOI Act, as the disclosure of this information would be a breach of the first and second principles of the DPA. Further to this the public authority advised the Commissioner that it did not believe that any of the DPA Schedule 2 conditions for processing could be satisfied. However, the public authority did not provide any further explanation as to why it thought that the release of this information would be a breach of the first and second principles.

## Analysis

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### Procedural matters

12. The Commissioner considered whether the refusal notice issued by the public authority on 30 November 2006 complied with section 17.
13. Section 17(1) states that a public authority who is relying on an exemption(s) in order to withhold information must give the applicant a notice which:
  - (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if it would not otherwise be apparent) why the exemption applies.
14. Section 17(7) states:

“A notice under subsection (1), (3) or (5) must –

  - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
  - (b) contain particulars of the right conferred by section 50.”
15. The refusal notice issued by the public authority on 30 November 2006 did not specify which exemptions it was relying upon to withhold the information in question, nor any reasoning as to why these exemptions applied. Furthermore, the notice did not contain details of the public authority's internal review procedures or the details of the right to complain to the Commissioner.
16. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

### Exemptions

#### Section 40

17. Section 40(2) gives an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.

18. One of the conditions listed in section 40(3)(a)(i) is where the disclosure of the information to any member of the public would contravene one of the data protection principles. It is this condition that the public authority is relying upon to withhold the information in question.
19. In this case the public authority has stated that it believes that the disclosure of the information in question would be in breach of the first and second data protection principles.
20. The first data protection principle requires that personal data is processed fairly and lawfully and must not be processed unless at least one of the conditions for processing in Schedule 2 of the DPA is satisfied.
21. The second principle of the DPA requires that personal data shall be obtained only for one or more specified and lawful purpose, and shall not be further processed in any manner incompatible with that purpose or purposes.
22. In order to establish whether this exemption has been applied correctly the Commissioner has first considered whether the withheld information constitutes the personal data of a third party. After examining the information in question he is satisfied that the information in question is the personal data of a third party, and that the data is not sensitive personal data.
23. The Commissioner has gone on to consider whether the disclosure of this information would contravene any of the principles of the DPA.
24. In reaching a view on this matter the Commissioner has been mindful of the amount of information which is already put into the public domain about doctors' registration by way of the Medical Register, and the fact that doctors who are working in the NHS are often described by their title, or job description, e.g. consultant, locum general practitioner, etc. He has also taken into consideration the role of a doctor, and the fundamental importance of a doctor being appropriately qualified to do the work that they are carrying out. He believes that the strength of this latter point is further augmented by the amount of information relating to a doctor's qualifications which is already placed into the public domain by way of the Medical Register.
25. The Medical Register is a publicly available document which lists all registered medical practitioners within the United Kingdom. This register shows the date that a doctor gained provisional registration, full registration, and, if the doctor is listed on the Specialist Register or the GP Register, the date on which the doctor gained entry to those registers. The details of a doctor's primary medical qualification are also available on the Medical Register.
26. In forming a view the Commissioner has also considered the booklet, Good Medical Practice. This is produced by the General Medical Council (the "GMC") and sets out the principles and values on which good medical practice is founded. The guidance is addressed to doctors, but it is also intended to let the public know what they can expect from doctors. Breaches of this guidance can also be referred to in the disciplinary procedures of the GMC. Paragraph 64 of the Good

Medical Practice states, "You must always be honest about your experience, qualifications and position, particularly when applying for posts."

27. It is the Commissioner's view that it would be within a doctor's expectation that information relating to their qualifications and experience would be disclosed in relation to proving that they were qualified to do the job they were doing.
28. Taking into account the above points it is the Commissioner's opinion that it would not be unfair for a public authority to confirm whether a doctor was qualified to be doing the job that they were doing. In this instance the information requested would confirm whether the doctor was in training whilst carrying out a specific post.
29. The Commissioner has gone on to consider whether the disclosure of this information would be unlawful. In reaching a view on this he has considered whether the disclosure of this information would constitute a breach of confidence or breach the Human Rights Act 1998.
30. The Commissioner is satisfied that there is no relationship of confider and confidant in relation to the information held by the public authority, as the information requested relating to the status of a doctor at the time she was employed by the public authority is held by the public authority of its own accord. The Commissioner is satisfied, therefore, that to release the information would not constitute an actionable breach of confidence. The Commissioner has also considered whether the disclosure of this information would be a breach of the Article 8 of the Human Rights Act 1998, which gives a right to private and family life. Having regard to the nature of the information requested, the Commissioner has formed the view that the disclosure of this information would be unlikely to breach Article 8. Finally, he has gone on to consider whether any other law prohibits the disclosure of this information, but has not found any evidence to show that one does. It is the Commissioner's opinion, therefore, that the disclosure of this information would be lawful.
31. The Commissioner has gone on to consider whether any of the conditions for processing listed in schedule 2 of the DPA can be satisfied. Schedule 2(6)(1) of the DPA states that personal data may be processed if,  
  
"The processing is necessary for the purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
32. Taking into account the points listed at paragraphs 24-27 above, the Commissioner is satisfied that there is a legitimate interest in the disclosure of this information, and that the information requested is necessary in order to fulfil this interest. Furthermore, given the low sensitivity of the information requested and the absence of any unfairness to the individual concerned, the Commissioner is satisfied that this disclosure would not cause any unwarranted prejudice to the rights and freedoms of the data subject. Therefore the Commissioner believes that this provides the necessary schedule 2 condition can be satisfied.

33. Given that the Commissioner believes that the disclosure of this information would be fair and lawful, and that there is a schedule 2 condition for processing, he is satisfied that disclosure would not be in breach of the first data protection principle.
34. In regard to the second principle the Commissioner does not consider that disclosure of that information in response to a request under section 1 of the FOI Act would constitute processing incompatible with the purpose for which the information was obtained.
35. In the Commissioner's view, the disclosure of this information would not be in breach of the data protection principles. Therefore he believes that section 40(2) is not engaged, and that it does not provide an exemption from disclosure.
36. This is an absolute exemption, and is not subject to a public interest test.
37. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

## **The Decision**

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38. The Commissioner's decision is that the public authority has not dealt with the request for information in accordance with the FOI Act in that:  
  
The public authority inappropriately withheld the requested information under section 40(2).
39. The public authority also failed to satisfy the requirements of section 17(1) and section 17(7), in that it issued an inadequate refusal notice.

## **Steps Required**

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40. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOI Act:  
  
The requested information should be released to the complainant.
41. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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42. 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

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43. 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](mailto: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 16<sup>th</sup> day of April 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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



## Legal Annex

### Section 17

- (1)** A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2)** Where –
- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim –
    - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
    - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
  - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3)** A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
  - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4)** A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.



- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where:
  - (a) the public authority is relying on a claim that section 14 applies,
  - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
  - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under subsection (1), (3) or (5) must-
  - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
  - (b) contain particulars of the right conferred by section 50.

## 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.