

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 June 2008

Public Authority: Dr J A Goldin
Address: Heathfielde Medical Centre
8 Lyttelton Road
London
N2 0EF

Summary

The complainant made a request for the work history of a General Practitioner (GP) (who, for the purposes of the Act is considered to be a public authority in his own right in respect of information relating to the provision of general medical services). The public authority withheld the information requested on the basis of the exemption contained in section 40(2). The Commissioner considered the case and upheld the public authority's reliance on section 40(2). However the Commissioner found the public authority had breached section 17(1)(b) of the Act.

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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 30 January 2006 the complainant made a request for; '*details of Dr Goldin's experience since qualification...*' The public authority did not respond to this request.
3. On 06 June 2006 the complainant re-phrased his first request and asked for; '*Full details of your work history in the years before you joined Heathfielde*' and also added a further request for; '*confirmation that there have not been any complaints against you since you joined Heathfielde. I refer to all and any complaints formal or informal, reconciled or not.*'

4. On 21 June 2006 the public authority responded and provided the complainant with information related to his complaints history. He however withheld the information related to his work history on the basis that '*Personal information of where I worked prior to joining Heathfield Medical Centre is not relevant to your complaint.*'
5. However, following advice from the Commissioner's office in a letter dated 16 November 2006, the public authority re-issued a response to the complainant dated 11 December 2006 in line with the requirements of section 17 of the Act and the Commissioner's guidance on the application of section 17 (Freedom of Information Good Practice Guidance No.1).
6. The public authority's response of 11 December 2006 withheld the information requested by virtue of the exemption contained in section 41 of the Act.
7. However by 02 November 2006 the complainant had requested an internal review of the public authority's decision of 21 June 2006.
8. The public authority concluded his review and responded to the complainant on 02 January 2007. It upheld its original decision to withhold the requested information based on the section 41 exemption it referred to in the letter of 11 December 2006.
9. It is important to point out at this stage that medical practices are not public authorities for the purposes of the Act. Rather, each General Practitioner (GP) is a separate legal person, and is therefore considered a separate public authority under the Act. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect that for convenience the practice will act as the single point of contact.
10. However, ultimately each GP in the practice is a public authority in their own right and the duty to respond in accordance with the requirements of the Act is placed on each GP and not on any medical practice or partnership of doctors of which they may form a part. (See the legal annex at the end of this notice for a more detailed explanation of the status of GPs under the Act).

The Investigation

Scope of the case

11. On 03 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to review the public authority's refusal to disclose his work history, adding, '*This is relevant because he may have a complaints history.*'

Chronology

12. On 08 November 2007 the Commissioner wrote to the public authority requesting clarification as to which exemption(s) he relied on to withhold the information requested. In light of the status of GPs under the Act, the Commissioner also advised the public authority that the information requested would normally be considered under section 40 rather than section 41 of the Act. In *Bowbrick v Nottingham City Council EA/2005/0006*, the Tribunal recognised that the Commissioner in some exceptional cases would be entitled to look for an appropriate exemption. (See Paragraphs 49-52).
13. The public authority responded on 04 December 2007. He informed the Commissioner that he now considered the information requested exempt under section 40 of the Act.
14. The public authority informed the Commissioner that he considered the information requested to be personal information and therefore exempt by virtue of the exemption contained in section 40(2).
15. The public authority also added that in line with the requirements of the section 40(3)(a)(i) he now believed that disclosure of the requested information would contravene the first and second data protection principles.
16. The Commissioner's view is that section 41 is not the applicable exemption in this instance. As stated above, the Practice is not considered a public authority under the Act, and since he has concluded that the information request is a valid request under the Act (See Paragraphs below), it is therefore held by the GP in his capacity as a public authority rather than by the Practice. (For clarity and ease of reference, the full text of section 41 is included in the Legal Annex at the end of this Notice).

Analysis

Procedural matters

17. Section 1 of the Act places a duty on public authorities upon a request for information to either confirm or deny the information is held.
18. The Commissioner's letter of 08 November 2007 also asked the public authority to provide an explanation as to why the complainant's request of 30 January 2006 did not receive a response.
19. In its response, the public authority explained that due to an ongoing clinical complaint made by the complainant, he did not identify the complainant's letter of 30 January 2006 as a request under the Freedom of Information Act, and instead dealt with it as part of the ongoing complaints process.

20. As noted above, GPs are considered public authorities under the Act rather than the medical practices which they form a part of. However, the Act considers GPs as public authorities only in respect of a specific category of information. Schedule 1, Part III of the Act lists public authorities in the NHS. These include, within paragraph 44:
- 'Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Services Act 1977, in respect of information relating to the provision of those services.'*
21. The Commissioner therefore considered whether the GP was a public authority for the purposes of the information requested. This therefore raises the issue of whether the information requested, *'Full details of the (GP's) work history in the years before you joined Heathfielde.'* was a request for information relating to the provision of any of the services referred to in paragraph 44. In order to make an informed determination on this point, the Commissioner requested, and was provided with a copy of the information requested.
22. The information provided is basically a copy of the GP's Curriculum Vitae (CV) which (as it appears) was submitted to the Practice as part of the application for his present role. It includes details of the degree and other qualifications obtained, all of which are related to medical practice, details of where he worked, all of which again relate to medical practice, and also indicates he is an NHS GP.
23. The Information Tribunal (Tribunal) in a recent decision described 'relate to' as *'a broad, inclusive descriptor.'* In respect of paragraph 44, the Tribunal added that information within the description envisaged would therefore include, *'information about the place where services were provided; and information about the people providing the services (for example, a Doctor, a nurse, a physiotherapist...).* *Since information about the people who provide services is included, so should information about their qualifications or training providing the information relates to their provision of services under the NHS Act.'* (See *J Welsh v Information Commissioner EA/2007/0088* at Paragraph 18).
24. Although the request specifically refers to the 'work history' of the GP, part of this is inevitably linked to his medical training because it is a requirement for individuals wanting to qualify as GPs to obtain practical experience from different hospital specialties. In other words, any aspect of his work history where he was undergoing medical training would fall within the category of information envisaged under paragraph 44. In any event, the Commissioner is of the view that the extensiveness of the words 'relate to' would also include the work history of a qualified GP in so far as they relate to the provision of services under the NHS Act.
25. The Commissioner considers that some of the information in the GP's CV regarding his employment history and medical training relate to the provision of NHS services because he is as indicated on his CV, an NHS GP. However, the Commissioner also notes that not all of the information contained in the CV relate to the provision of those services, but has not referred to them in this Notice

because to do otherwise would defeat the intention of section 40(2) which is to protect personal information from disclosure.

26. It follows the request for the GP's work history is a valid request for information under the Act in so far as it is information in respect of his medical training, and also information in respect of his employment history within the NHS. The GP therefore qualifies as a public authority for the purposes of this request.

Exemption

Section 40

27. The combined effect of sections 40(2) and 40(3)(a)(i) of the Act is that third party personal data is exempt from disclosure under the Act if its disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 (DPA).
28. The full text of section 40 is available in the Legal Annex at the end of this notice
29. In his letter of 04 December 2007 the public authority argued that information about his work history prior to joining the Practice was personal information within the definition of the DPA.
30. The public authority further argued that when he provided his curriculum vitae to the Practice he had a legitimate expectation that the information provided in the curriculum vitae was to be used for the '*purpose of my job application and would not be disclosed to others.*' Disclosure would therefore likely contravene the fairness element of the first data protection principle.
31. The public authority also added that disclosing information from his curriculum vitae regarding his previous work history is incompatible with the purpose for which that information was given to the Practice and such disclosure would therefore also likely contravene the second data protection principle.

Is the withheld information personal data?

32. The Commissioner first considered whether the information requested is personal data within the definition of the DPA.
33. Section 1(1) of the DPA defines personal data as '*data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.....*'
34. A full text of the definition of personal data in section 1(1) of the DPA is available in the Legal Annex at the end of this notice.
35. The Commissioner accepts the work history of the public authority is personal data within the definition of the DPA. The data in question relates to an identifiable living individual.

Would disclosure contravene the first data protection principle?

36. The Commissioner next considered whether disclosure of the requested information would contravene the first data protection principle.
37. The first data protection principle states in part; *'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met.....'*
38. A full text of the first data protection principle is available in the Legal Annex at the end of this notice.
39. The Commissioner considers that the most applicable condition for processing in this case is likely to be Schedule 2 (6)(1) which states,
- 'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by 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.'*
40. In considering whether disclosure of the requested information would contravene the requirements of the first data protection principle, the Commissioner has therefore taken into consideration the reasonable expectations of the public authority in respect of his work history becoming a matter of public knowledge, and the legitimate interest of the public in knowing that a person providing a medical service(s) is suitably qualified to do so.
41. The Commissioner is of the view that while the public authority would have been aware of the fact that his qualifications for the role are a vital piece of public information, details of which may in future be open to public scrutiny, he would not have expected the role would require him to disclose details of his previous work history as a matter of course to the general public. It would be wrong to expect such disclosure should have been within the reasonable contemplation of the public authority. It is more plausible to suggest he might have expected his primary qualification for the role to be publicly available.
42. The Commissioner considers the public has a legitimate interest in knowing that a person providing a medical service(s) is suitably qualified to do so. However the Commissioner's view in this case is that it is possible to satisfy the public's legitimate expectation by providing access to information on the public authority's suitability as a GP without including details of his work history.
43. He notes in this respect that the List of Registered Medical Practitioners (LRMP) on the General Medical Council's website does list among other things a Doctor's primary medical qualification. The public authority is on the LRMP with details of his primary medical qualification included.
44. It is worth mentioning the information on the LRMP includes a GP's name, gender, year and place of primary medical degree, date of registration, eligibility

to practise as a GP, and any publicly available Fitness to Practice history since 20 October 2005. Fitness to Practice Hearings constitutes panels who preside over allegations made against GPs. Therefore, where any those of hearings or decisions are made public, they would be included on the GP's profile on the LRMP. At the time of drafting this Notice, the public authority did not have a Fitness to Practice history included on his profile.

45. In conclusion, bearing in mind that in relation to the sixth condition in Schedule 2, the Tribunal noted in *House of Commons v ICO & Norman Baker* (EA/2006/0015 and 0016) that the burden of proof is reversed in favour of withholding information, the Commissioner's view is that the legitimate interests of the public to whom the information would be disclosed do not outweigh those of the public authority in this case.
46. The Commissioner is therefore satisfied that disclosing the public authority's work history would contravene the fairness element of the first data protection principle
47. As the Commissioner is satisfied that disclosure of the requested information would contravene the first data protection principle of the DPA, he has not gone on to consider the second data protection principle.
48. Be that as it may, the Commissioner is aware that in other senior public facing roles, previous work histories may be routinely available to the public. However, he believes that in this case it was not within the reasonable contemplation of the public authority that such information would be disclosed, and also because in his view, disclosing the public authority's qualification for his role is sufficient to satisfy the legitimate interest of the public in this case.

The Decision

49. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act:
 - He correctly withheld the requested information under the exemption contained in section 40(2) of the Act.
50. However the public authority breached section 17(1)(b) by failing to state in the refusal notice that section 40(2) was the exemption it was relying on. (A full text of section 17 is available in the Legal Annex at the end of this Notice).

Steps Required

51. The Commissioner requires no steps to be taken.

Right of Appeal

52. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 30th day of June 2008

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Refusal of Request

Section 17(1) provides that -

“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.”

Section 17(2) states –

“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.”

Section 17(3) provides that -

“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.”

Section 17(4) provides that -

“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.

Section 17(5) provides that –

“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.”

Section 17(6) provides that –

“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.”

Section 17(7) provides that –

“A notice under section (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.”

Personal information.

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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.”

Section 40(4) provides that –

“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).”

Section 40(5) provides that –

“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).”

Section 40(6) provides that –

“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.”

Section 40(7) provides that –

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.

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

Definition of Personal Data – Section 1(1) of the Data protection Act 1998

‘ “personal data” means data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and indication of the intentions of the data controller or any other person in respect of the individual...’

First Data Protection Principle – Data Protection Act 1998

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Status of GPs under the Act

Schedule 1 of the Act outlines which bodies are covered by the Act. Part III of Schedule 1 relates to organisations and individuals in the National Health Service. Paragraphs 44 and 45 of Part III deal with the status of GPs:

'44. Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service Act 1977, in respect of information relating to the provision of those services.

45. Any person providing personal medical services or personal dental services under the arrangements made under section 28C of the National Health Service Act 1977, in respect of information relating to the provision of those services.'

The Commissioner is satisfied that a GP is a separate legal person who falls within either or both of the classes above. Therefore each GP is a separate public authority for the purposes of the Act whether they operate in a medical practice with other GPs or not. However, the Commissioner recognises that information held by GPs will only be covered to the extent where that information relates to the 'provision' of general or personal medical services. Therefore, some information held by GPs will not fall within this condition.