

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2011

Public Authority: Central and North West London MHS Foundation Trust

Address: Greater London House
Hampstead Road
London
NW1 7QY

Decision (including any steps ordered)

1. The complainant has requested a copy of the full set of care records for his deceased daughter. Central and North West London NHS Foundation Trust (the Trust) provided the complainant with a full set of care records under the Access to Health Care Records Act 1990 (AHRA). The complainant does not consider that he has been provided with the full set of care records.
2. The Commissioner's decision is that section 21(1) would be applicable in this case as the requested information is reasonably accessible outside of the Freedom of Information Act 2000 (FOIA) to the complainant.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 April 2011, the complainant wrote to the Trust and requested a copy of the full set of care records of his deceased daughter.
5. The Trust responded on 12 May 2011. It stated that it had already provided the complainant with the full set of care records.
6. Following an internal review the Trust wrote to the complainant on 16 September 2011. It stated that, "Disclosure of care records would generally be exempt from the FOIA with reference to s40 (1) and (2) (personal information) and s41 (1) (information provided in

confidence). Under Trust policy, requests for care records are dealt with instead under the terms of the Data Protection Act 1998 and where the patient is dead (as [complainant's] daughter ... was at the time of the request) with further reference to the Access to Health Records Act 1980...In any event, and as confirmed to [the complainant] by letter on 12th May, a full set of care records has already been disclosed. Although [the complainant] believes that personal information from [complainant's daughter's] care file has been withheld we can find no evidence of this."

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner will consider whether the full set of care records should have been provided to the complainant under FOIA.

Reasons for decision

Section 21(1)

8. Section 21(1) can be applied when all the relevant recorded information is reasonably accessible to the applicant. It is an absolute exemption and so has no public interest component.
9. Whilst the Trust has not specifically referred to section 21(1) in this case, in its original response it explained that it had already provided the complainant with the requested information and it reiterated at internal review that the full set of care records had been provided to the complainant under the AHRA. The Commissioner therefore considers that the Trust was relying upon section 21(1) although it failed to specify this specific section of the FOIA.
10. The Trust has explained that it has provided the full set of care records to the complainant and that the appropriate access regime for a deceased person's medical records was the AHRA. It confirmed that it had provided the complainant with this information through the AHRA.
11. Although FOIA is designed to be applicant blind, in order to consider whether section 21 applies it is important to take into account the individual circumstances of the applicant, and whether the information requested is reasonably accessible to that applicant.

12. In determining whether information is reasonably accessible to the applicant, the Trust should take into account any legal access schemes or rights which are available to that applicant. In this instance the Trust has taken into account, and cited, the AHRA.
13. Section 3(f) of the AHRA provides that an application for access to a health record, or to any part of a health record may be made by a deceased patient's personal representative and any person who may have a claim arising out of the patient's death. The AHRA requires the Trust to disclose documents in certain situations.
14. The Commissioner has considered the accessibility of the information requested by the complainant through the two access regimes of the AHRA and the FOIA. The AHRA only allows disclosure to certain categories of persons as defined in section 3(1). The Trust considered this and provided the information to the complainant under the AHRA. The information must therefore be considered to be reasonably accessible to him.
15. The Commissioner understands that the complainant is dissatisfied with the sufficiency of the medical records provided. The Commissioner is content that the Trust has provided the complainant with a full set of care records as he has not been presented with any evidence that this is not the case.
16. In these circumstances the Commissioner considers that disclosure of this information is exempt under section 21(1) of the Act. This is because it is reasonably accessible to the complainant as it has been provided under the AHRA.

Right of appeal

17. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Pamela Clements
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