

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 03 September 2013

**Public Authority:** Walsall Clinical Commissioning Group

**Address:** Jubilee House  
Bloxwich Lane  
Walsall  
West Midlands  
WS27 7JL

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Black Country PCT Cluster relating to NHS funded tattoo removal. The complainant was provided with some information but much of the requested information was withheld under section 40(2) of the Freedom of Information Act 2000 (FOIA). As Black Country PCT cluster is now defunct, Walsall Clinical Commissioning Group (WCCG) has taken over responsibility for this FOIA request.
2. The Commissioner's decision is that section 40(2) FOIA was correctly engaged in this case.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 8 January 2013, the complainant wrote to Black Country PCT Cluster and requested information in the following terms:

How many cases of tattoo removal have been funded by the cluster in the past two years?

How much did they cost each?

What tattoo was removed in each case from which part of the body and was the patient male or female in each case?

When did each removal take place?

5. The Black Country PCT Cluster responded on 22 February 2013. It provided the complainant with the information in relation to the first part of the request, but only gave him a banding of numbers. It refused to provide the exact figures in relation to the first part of the request, and the information in relation to the other parts of the request, under section 40(2) FOIA.
6. The complainant requested an internal review on 22 February 2013. The public authority sent the outcome of its internal review on 18 March 2013. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner 22 March 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether Black Country PCT Cluster was entitled to rely on section 40(2) FOIA as a basis for refusing to provide the information requested.

### **Reasons for decision**

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9. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

*"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."*

10. Section 40(3)(a)(i) of the Act states 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),”*

11. The Commissioner has first therefore considered whether the information redacted under section 40(2) is the personal data of one or more third parties.
12. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:  
“data which relate to a living individual who can be identified –
  - (i) from those data, or
  - (ii) 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 any indication of the intention of the data controller or any other person in respect of the individual.”
13. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
14. After viewing the withheld information, the Commissioner considers that it does fall within the above definition. A further explanation is provided in the Confidential Annex attached to this Notice.
15. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that “Personal data shall be processed fairly and lawfully”. Furthermore at least one of the conditions in Schedule 2 should be met.

### **Likely expectation of the data subjects**

16. In this case WCCG has explained that there would be no reasonable expectation by data subjects that specific information linked to the

location of the tattoos and when they were removed would be placed into the public domain.

17. For the reasons provided in the confidential annex attached to this Notice, the Commissioner accepts that data subjects would not expect the withheld information to be disclosed into the public domain.

**Would disclosure cause damage and distress to the data subjects**

18. WCCG has argued that if the withheld information were disclosed it is likely that this would have significant impact on the mental health of data subjects.
19. For the reasons provided in the confidential annex attached to this Notice, the Commissioner accepts that disclosure would cause damage and distress to any data subjects.

**Legitimate public interest**

20. The Commissioner considers that there is a public interest in the NHS being open and accountable in relation to how it is spending public money. However in this case he does not consider that this would outweigh the interests of any data subjects, for the reasons set out above and in the confidential annex attached to this Notice.

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**