

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

### **Decision notice**

**Date:** 12 August 2013

**Public Authority:** Calderdale and Huddersfield NHS Trust

**Address:** The Royal Infirmary

Lindley

Huddersfield

HD3 3EA

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

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1. The complainant has requested a copy of a report produced by West Yorkshire Audit Consortium under reference CFCHFT 01/2013 - First Ref NYRT 11/00158. Calderdale and Huddersfield NHS Trust (the Trust) provided the complainant with the requested report but made redactions under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Trust has correctly applied section 40(2) FOIA to make the redactions to the report.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. The complainant made a request for a copy of a report produced by West Yorkshire Audit Consortium under reference CFCHFT 01/2013 - First Ref NYRT 11/00158.
5. On 12 November 2012 the Trust responded. It provided the complainant with the report but made a number of redactions under section 40(2) FOIA.
6. The complainant requested an internal review on 5 December 2012. On 11 January 2013 the Trust sent the outcome of its internal review. It upheld its original position.
7. During the course of the Commissioner's investigation the Trust removed some of the redactions it had originally made.

## Scope of the case

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8. The complainant contacted the Commissioner on 31 January 2013 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation the Trust also applied section 14 FOIA as it said the request was vexatious.
10. The Commissioner has considered whether the Trust was correct to make redactions to the requested information under section 40(2) FOIA or alternatively whether the request was vexatious under section 14 FOIA.

## Reasons for decision

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11. 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. The withheld information is a report into an investigation into allegations of misconduct by two employees of the Trust. The Commissioner considers that this is information from which those two individuals would be identifiable. This is because the Trust has explained that whilst the individuals are not named in the report it is likely that other individuals within and connected to the Trust would be aware of the identities of the data subjects due to the job titles of the individuals and the nature of the allegations.
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 subject**

16. The Trust explained that the investigation was for the purpose of identifying any criminal conduct for prosecution by the relevant authorities or any matters for internal disciplinary proceedings. It argued that the two employees investigated had a reasonable expectation that this information would not be shared with other individuals.

17. The Commissioner accepts that under the circumstances, the data subjects would not have expected full details of the report to be disclosed into the public domain, particularly as it was concluded that there was insufficient evidence to corroborate the allegations.

### **Would disclosure cause damage and distress to the data subject**

18. The Commissioner considers that disclosure of the redacted information would cause damage and distress to the data subjects as it relates to unfounded allegations of misconduct within their employment. As the investigation has concluded that there was no evidence to corroborate the allegations, to release further information contained within the report would cause distress to the data subjects and would potentially cause damage to their professional reputation.

### **The Legitimate Public Interest**

19. The Commissioner considers that there is a legitimate public interest in disclosure of information which demonstrates that public authorities are taking allegations of misconduct seriously and sufficiently investigating such matters. In this case the Trust has disclosed a redacted copy of the report which goes some way to meeting this legitimate public interest. However where such allegations are unfounded the legitimate interests of the data subject are likely to outweigh the legitimate public interest in disclosure. In this case it is highly unlikely the data subjects would have expected the redacted information to be disclosed and disclosure would cause damage and distress to those individuals. Taking into account all of the circumstances of this case, the Commissioner considers that it would be unfair to disclose the redacted information. Section 40(2) FOIA was therefore correctly engaged in this case.

20. Whilst the Commissioner would normally consider the application of section 14 FOIA prior to considering the application of any exemptions, in this case the Trust had complied with the request by releasing a redacted copy of the report to the complainant. Furthermore whilst the Commissioner has not considered whether or not section 14 FOIA would be applicable in this case, the Trust provided very limited arguments in support of section 14 FOIA in its response to the Commissioner. Whilst it may have been able to provide further evidence in support of its late application of section 14 FOIA, under the circumstances the Commissioner decided it would be more appropriate and efficient to consider the case under section 40(2) FOIA in the first instance. As the Commissioner has concluded that section 40(2) FOIA

was correctly applied to make the redactions to the requested report, he did not go on to consider section 14 FOIA any further.

## 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**