

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2014

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle upon Tyne
NW1 4PA

Decision (including any steps ordered)

1. The complainant has requested information about a named Compliance Inspector's medical qualifications and experience. The Care Quality Commission withheld the information, citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the Care Quality Commission has correctly applied this exemption and does not need to take any further action.
3. Additional information in support of the Care Quality Commission's position is provided in a confidential annex.

Request and response

4. On 8 August 2013, the complainant wrote to the Care Quality Commission (CQC) and requested information in the following terms:
"I would be grateful if you would provide me with details of your [(named Inspector's)] medical qualifications and experience"
5. The CQC responded on 19 September 2013. It provided some information within the scope of the request but refused to disclose the remainder.

6. CQC also provided information about the role of a Compliance Inspector and the CQC more generally; complying with the duty under section 16 of the FOIA to provide 'advice and assistance' to a requester.
7. Following an internal review, the CQC wrote to the complainant on 21 October 2013, maintaining its position.

Scope of the case

8. The complainant contacted the Commissioner on 23 October 2013 to complain about the way their request for information had been handled.
9. In addition to the CQC's application of the exemption under section 40(2) to the requested information, the complainant was not satisfied with the length of time that it took the CQC to respond. They also considered that the CQC had misinformed the Commissioner about their request for an internal review and complained that they had not received particular attachments, sent as part of the CQC's response.
10. The CQC had responded to the complainant's request on the 29th working day following its receipt of the request. The Commissioner has noted that the CQC accepted in its submission to him that this was a little over the 20 working days for compliance. It is, however, a breach of section 10 of the FOIA and will be recorded as part of the Commissioner's ongoing activity to monitor public authorities' performance under the Act.
11. In correspondence to the Commissioner dated Tuesday 24 September 2013, the CQC mentioned that they had not received a request for an internal review from the complainant. The complainant had sight of this correspondence and, since they had requested an internal review on Thursday 19 September, argued that the CQC was deliberately misleading the Commissioner on this matter.
12. As part of its submission to the Commissioner, the CQC forwarded an email it had sent to the complainant, dated 11 October 2013, which addressed the complainant's concerns about their request for an internal review.
13. In the email, the CQC told the complainant that it had checked its records and did not have a record of receiving the complainant's email on the 19 September 2013, requesting a review. According to its

records, it became aware of the complainant's request for a review through a separate email the complainant sent to the CQC on 27 September.

14. The CQC had gone on to ask its IT provider to check the audit records to see if the email of 19 September was ever received by its Information Access mailbox. The provider replied that:

"After checking the logs from mail gateway, I cannot see any emails coming from [email address] to information.access@cqc.org.uk with the subject "Re: 20130919 Response to CQC IAT 2013 0900" on Thursday, 19 September 2013."
15. The CQC explained to the complainant that it had not intended to mislead anyone and that, at the time of its correspondence to the Commissioner on the 24 September, it was simply not aware that the complainant had made a request for an internal review.
16. The Commissioner notes the effort the CQC made to trace the complainant's email of 19 September. He accepts that it is likely that a technical problem prevented the CQC from receiving the complainant's email of 19 September and does not consider the CQC intended to deceive the Commissioner.
17. The complainant also told the Commissioner that they had not received the email attachments that contained the additional information the CQC had provided as part of the response it had emailed to the complainant on 19 September.
18. Included in its submission, the CQC provided the Commissioner with this email and the email attachments, which were held in a WinZip folder. Its email to the complainant of 11 October 2013 also discussed the missing email attachments. The CQC's IT audit records showed that the email and attachments had been sent to the complainant on 19 September at 08:58. The CQC suggested that a technical problem had prevented the complainant from accessing the attachments.
19. The Commissioner notes that he had also forwarded the CQC's email and attachments (again in a WinZip file) to the complainant on 19 December 2013 and that the complainant had reported that they had not received the attachments. The Commissioner had then sent the attachments to the complainant in three separate emails on 8 January 2014.
20. The Commissioner is therefore prepared to accept that the CQC had sent the complainant the particular email attachments on 19 September and that a technical problem had prevented the complainant from accessing the WinZip file.

21. The focus of the Commissioner's investigation is therefore the CQC's application of the exemption under section 40(2) to the information that it withheld.

Reasons for decision

22. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of a third party (ie someone other than the requester) and the conditions under either section 40(3) or 40(4) are also satisfied.
23. The Commissioner therefore first considered whether the requested information is the personal data of a third party.
24. The Data Protection Act (DPA) defines personal data as '*...data which relate to a living individual who can be identified from those data...*'
25. The Commissioner is satisfied that their specific medical qualifications and experience is biographically significant information about the named CQC Compliance Inspector and, as such, is the personal data of that individual.
26. Having decided that the requested information is third party personal data, the Commissioner then turned his attention to the conditions under section 40(3).
27. The first condition under section 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA. The Commissioner considered whether the CQC was correct when it argued in its submission that disclosing the information would breach the first data protection principle: that personal data 'shall be processed fairly and lawfully...'
28. When considering whether disclosure would be unfair, and so breach the first principle, the Commissioner took three factors into account:
 - What reasonable expectation do the individuals have about what will happen to their personal data?
 - Have the individuals given their consent to disclosure?
 - What might be the likely consequences resulting from disclosure?

29. Assessing fairness however, also involves balancing the individual's rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so. The Commissioner therefore also finally considered these interests.
30. Expectation: Whether an employee might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to the employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
31. The information in this case concerns an individual in their professional role as a Compliance Inspector; employed by CQC to make sure quality and safety standards within social care services are met.
32. In its response to the complainant, the CQC explained that individuals who provided information to it as part of its employment process would have received assurance from the CQC that this information would be handled confidentially. The CQC has also told the Commissioner that in making an application for employment, individuals would reasonably expect that details of their qualifications and experience would not be disclosed into the public domain, in a way that identifies them.
33. In addition, the CQC has argued that although its Inspectors are public facing employees, they do not have a level of seniority that would bring with it the expectation that their qualifications and experience would be made publicly available under the FOIA.
34. Having considered its arguments, the Commissioner agrees with the CQC that the named Inspector concerned might reasonably expect that their personal data would not be disclosed.
35. Consent: The CQC has told the Commissioner that the named Inspector has not consented to their personal data being disclosed.
36. Consequences of disclosure: Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employee concerned. Although an employee may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.

37. CQC maintains that disclosing the requested information might have two adverse consequences. The first is detailed in the confidential annex to this notice.
38. Second, the CQC argues that disclosing this information would set a precedent and potentially make the qualifications and experience of all CQC Compliance Inspectors a matter of public record – akin to creating a register of CQC Inspectors. CQC say that public registers of the qualifications of other professionals (doctors, social workers and lawyers for example) are generated through primary legislation and are not likely to have been an intention of the FOIA.
39. The Commissioner accepts, as does the CQC, that there is a legitimate interest in overall transparency in the way a public authority such as the CQC conducts its business. However, there is no presumption that this should automatically take priority over personal privacy. The Commissioner judges each case on its merits.
40. In this case, the Commissioner is not convinced that the specific information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data of the Inspector concerned.
41. He is satisfied that the CQC has put forward compelling arguments for protecting the Inspector's personal data, namely:
 - the individual's likely expectations about how their personal data will be managed, implicit in the role of Compliance Inspector;
 - the individual's lack of consent to its release; and
 - the possible consequences of releasing the information.
42. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the data subject and that it would not be fair to disclose the requested information in this case. Consequently, the Commissioner considers that section 40(3)(a)(i) could be applied to this request, and that the CQC is correct to withhold the information.
43. He did not therefore go on to consider whether disclosing the information would breach any of the other conditions under section 40(3) or 40(4).

Right of appeal

44. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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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