

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2016

Public Authority: Birmingham Cross Clinical Commissioning Group (the "CCG")

Address: Bartholomew House
142 Hagley Road
Birmingham
B16 9PA

Decision (including any steps ordered)

1. The complainant made a request to the CCG for its recruitment and selection policy and information relating to the ethnic breakdown and qualifications of staff on the Quality & Safety Team broken down by job grade and job role/title. The complainant also asked for an ethnic breakdown and qualification information of shortlisted candidates for a role on that team. The CCG provided all of the requested information but refused to provide the job role/title of staff on the Quality and Safety team as it did provide the ethnic breakdown, qualification information and job grade of staff on that team. It considers that the job role/title information alongside the information it did provide was exempt from disclosure under section 40(2) FOIA.
2. The Commissioner's decision is that the CCG has correctly applied section 40(2) FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 26 October 2015 the complainant requested information of the following description:
 - a) A copy of your Recruitment & Selection Policy (this is not available on your website) – I would also like to know what training, if any all recruiting managers have had in the past year in respect to R&S and

Equal Opportunities;

b) A breakdown of the ethnic origin of all staff (grade 7 and above) currently comprising the Quality & Safety Team to include job roles/grades, University Degrees and PRINCE 2 certificates; and

c) A breakdown of the ethnic origin of all shortlisted candidates (529-BXC171) to include University Degrees and PRINCE 2 certificates.

5. On 9 November 2015 the CCG responded. It provided the complainant with information in response to the request but explained that it could not provide any detail on staff Qualifications or PRINCE 2 training as this is not held electronically.
6. The complainant requested an internal review in relation to part b of the request. On 22 February 2016, the CCG wrote to the complainant with the internal review. It explained that on 16 February 2016 the complainant had requested additional information which was to combine the staff qualifications to the grade and job role.
7. The complainant does not consider that this was a new request for information but was a clarification of what she considered to be outstanding from the original request. The complainant provided the Commissioner with this correspondence and it does appear to clarify what she was originally requesting rather than being a new request. The CCG subsequently confirmed, during the course of the Commissioner's investigation, that it had not logged the clarification of 16 February 2016 as a separate request for information.
8. In its internal review the CCG said that whilst grade and job role information is not classed as personal data, combined with the qualifications of those occupying these roles, would be classed as third party personal data and was therefore exempt under section 40(2) FOIA.
9. However in order to try and answer the request it asked members of the Quality and Safety Team to provide this information to it with consent and it provided the complainant with a combination of qualifications held by staff within the team but not linked to particular job roles.

Scope of the Case

10. The complainant contacted the Commissioner on 1 March 2016 to complain about the way her request for information had been handled.

11. During the course of the Commissioner's investigation, the CCG provided the complainant with a table containing an ethnic breakdown of staff on the Quality and Safety team along with job grade and qualifications. It upheld its position to refuse to provide the job role/title information alongside the qualification information as it considers this to be exempt under section 40(2) FOIA.
12. The Commissioner has considered whether disclosure of the job role/title information alongside the qualification information already provided would be exempt under section 40(2) FOIA.

Reasons for decision

Section 40(2)

13. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
14. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
15. The CCG has informed the Commissioner that it believes that the job role/title information alongside the qualification information already provided is the personal data of the staff members, and that the disclosure would be unfair and therefore in breach of the first principle of the DPA.
16. In order to reach a view on the CCG's arguments the Commissioner has first considered whether the job role/title information would constitute the personal data of third parties.
17. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
18. In this instance the information in question is job roles/title within the Quality and Safety team. Whilst this wouldn't ordinarily be classed as personal data, in this case this information has been requested alongside the qualifications of those individuals. The CCG therefore removed the job role information so that it could anonymise its response and provide the qualification information alongside the ethnic breakdown

and job grade information which was disclosed. The Commissioner does consider that job role/title information alongside qualification information and ethnic breakdown would enable the individuals who currently occupy those roles to be identified and would therefore also identify their individual qualifications.

19. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.
20. When considering whether the disclosure of this information under the FOIA would be fair, the Commissioner has to take into account the fact that FOIA is applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner is not able to take into account the unique circumstances of the applicant. Instead the Commissioner has had to consider that if the information were to be disclosed, it would in principle be available to any member of the public.
21. The CCG explained that the team in question is made up of 23 staff all of which have unique job titles. It explained that it collects and holds copies of staff qualifications for recruitment purposes which the successful staff are aware. It said that this is their personal information and they would not expect this to be disclosed as a result of an FOIA request. It said that it did try asking for consent of the staff however this was not given and one member of staff that felt vulnerable that she would be identified from the information put their request into writing asking the CCG not to process her personal data for this request. The CCG summarised that staff would expect that that information is kept secure and not shared inappropriately.
22. In order to reach a view on whether the disclosure of this information would be fair or unfair, the Commissioner has considered the nature of the information itself.
23. The withheld information is job/role title information, however as explained this was removed so that qualification information could be provided anonymously. So by disclosing the unique job titles along with the qualification information requested, this would identify individuals within the team and what their qualifications are. This is the personal information of the staff on the team and whilst there is a link to their professional life, in that qualification information is relevant to obtaining the job role and held on their HR file, it is also information relating to their private lives as it is the qualifications obtained both pre and post-employment. Furthermore the Commissioner does not consider that this

team is made up of very senior individuals within the CCG and nor does the team occupy a public facing role.

24. After considering the nature of the withheld information, the Commissioner believes that the staff would have had the reasonable expectation that their qualification information, linked to their unique job role/title would not be placed into the public domain.
25. The Commissioner has however gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subjects set out above.
26. Whilst the Commissioner understands that the complainant has a personal interest in the recruitment and selection of this team, this is not a legitimate public interest. The Commissioner does consider however that there is some public interest, that recruitment and selection within the public sector is done as fairly and openly as possible. In this case the CCG has supplied a substantial amount of information to the complainant to go some way to meeting this legitimate public interest. However on balance, the Commissioner does consider that the information removed from disclosure (the job role/title information) was done so to protect the identity of staff from being disclosed alongside their individual qualification information and that staff had a reasonable expectation that their qualification information alongside their job role/title would not be disclosed into the public domain.
27. After considering the nature of the withheld information, and the reasonable expectation of the staff, the Commissioner believes that the disclosure under FOIA would be unfair and in breach of the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subjects in this case.
28. Therefore the Commissioner believes that section 40(2) FOIA is engaged, and provides an exemption from disclosure. As such he believes that the job role/title should be withheld in the context of this request which was to link it to the qualification information that has been provided.

Right of appeal

29. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

30. 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.
31. 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

Gemma Garvey
Senior Case Officer
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