

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2016

Public Authority: Health Education England
Address: 1st Floor
Blenheim House
Duncombe Street
Leeds
LS1 4PL

Decision (including any steps ordered)

1. The complainant has requested information relating to correspondence from a named person. The Health Education England (HEE) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. The Commissioner's decision is that HEE has correctly applied section 40(2) of FOIA to the withheld information. Therefore the Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

2. On 5 October 2015, the complainant requested the following:

"Please provide me with electronic copies of all of the content contained in all correspondence whether in paper or electronic form sent and/or received by Wessex Deanery to/from the following since 1st January 2013:

- *[named person redacted], and*
- *anyone acting on behalf of [named person redacted] eg a lawyer.*

When responding please note:

- *If you are applying exemptions such as Section 41 or Section 43 to any correspondence, you should still provide a copy of the content with only the exempt part(s) redacted;*

- *ICO guidance states that you should assess whether you can make personal data fair to release by anonymising it, eg by removing the name but leaving the rest of the information;*
- *If files or documents are attached to any letters and/or emails then you should include the content of all attachments;*
- *Where an email is part of an email chain, you should include all of the content of the other emails in the chain to show the context; and*
- *All letters and/or emails that meet the criteria should be included regardless of any privacy markings such as (but not limited to) 'personal', 'private' and/or 'confidential'.*

If you redact any information, please specify precisely which exemption you are applying in respect of each redacted item.

If the request exceeds your time/cost criteria for an individual request please contact me to discuss how we can adjust the request to fit the criteria.'

3. On 20 October 2015 HEE refused to provide the requested information and cited the exemptions section 40(5) and 40(2) of the FOIA.
4. On 20 October 2015 the complainant requested an internal review as he thought the information could be anonymised.
5. On 17 November 2015 HEE provided the outcome of the internal review. It confirmed that under section 1 of FOIA it held some information relating to the named individual that falls within the remit of the request and refused to provide it citing section 40(2) (Personal Information) of the FOIA. It stated that it had also considered the section 41 exemption where information might be considered a breach of confidence at common law.

Scope of the case

6. On 4 March 2016 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled and after providing further documents the case was accepted on 10 March 2016.

7. The Commissioner considers the scope of this case to be to determine if HEE has correctly applied section 40(2) FOIA to the withheld information.
8. If the Commissioner finds that HEE is not able to rely on section 40(2) to refuse the information then he will consider whether HEE can rely on section 41 to refuse the requested information.

Reasons for decision

Section 40(2) – Third party personal data

9. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
11. 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 and has them as its main focus or impacts on them in any way.
12. HEE consider this to be the personal data of the third parties named in the correspondence and therefore exempt from disclosure.
13. The Commissioner considers that the information withheld under section 40(2) is information from which living data subjects would be identifiable.

Sensitive personal data

14. Any consideration of fairness must first determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to:
 - (a) racial or ethnic origin
 - (b) political opinions
 - (c) religious beliefs
 - (d) trade union membership

- (e) physical or mental health
 - (f) sexual life
 - (g) criminal offences, sentences, proceedings or allegations.
15. Having viewed the withheld information, the Commissioner considers that some of the requested information in part falls into these categories of sensitive personal data.

Would disclosure breach the Data Protection Principles?

16. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
17. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

18. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
19. The information in this case concerns personal correspondence and that any disclosure under FOIA is a disclosure to the world at large without limits. The Commissioner is satisfied that the individuals named would have a reasonable expectation that HEE would not disclose to the world the full exchange of correspondence. Consent to disclosure has been explicitly refused in this case.

Consequences of disclosure

Damage and distress

20. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individuals.
21. HEE argued that disclosure of the information into the public domain would be distressing for the identified individuals. It would cause a high level of upset, emotional and mental pain due to the ongoing sensitive and lengthy nature of the family dispute that has arisen from this.

22. To avoid inadvertent disclosure of the information itself, the Commissioner does not propose to go into further details in this decision notice. However, he is satisfied that the individuals to whom the personal data relates would expect the information to be withheld and that disclosure would be distressing for the named individuals.

Anonymising the information

23. The complainant states that the information could be made fair to disclose *"by removing the name but leaving the rest of the information"*. He argued that he never expected to receive any personal data from HEE and that he had specifically asked for HEE to anonymise the data and release the information in anonymised form.
24. The Commissioner considers that just removing the individuals' names cannot anonymise this information. The data subject is clearly identifiable because the complainant has named the individual and asked for information which relates to them and nothing else. It would be apparent to anyone, who the sender and the receiver are as that is the sole focus of the request.
25. In conclusion, information exempt under section 40(2) makes up the entirety of the correspondence and therefore complete anonymization is extremely problematic to achieve.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

26. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
27. HEE have stated their concern that the request has no *'clear focus and that it is not for information, rather documents in the form of emails. The request might therefore be classified as a fishing expedition which could be used to target an individual ...'*
28. HEE do not feel that there is any public interest in the disclosure of this information. Public interest should be treated as distinct from matters of purely private or personal information.
29. The Commissioner has considered the context and background to the correspondence and he is satisfied that the information concerns a private family matter.

30. Having considered HEE's submission and the views of the complainant, 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 and sensitive personal data of those concerned:
- the individuals' likely expectation about how their personal data and sensitive personal data will be managed
 - the individuals' lack of consent to its release; and
 - the possible negative consequences to the individuals of releasing the information.
31. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individuals named within the correspondence and that it would not be fair to disclose the requested information in this case.

Conclusions

32. The Commissioner is satisfied that the withheld information is personal data and sensitive personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds HEE's application of the exemption provided at section 40(2) of the FOIA.
33. As the Commissioner has concluded that the information is exempt under section 40(2) of the FOIA, he has not gone on to consider whether HEE can rely on section 41 to refuse the requested information.

Other Matters

34. The Commissioner notes that the complainant has made this same request to more than one public authority. The Commissioner would remind the complainant that the Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
35. Whilst most people exercise this right responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
36. In this case, the Commissioner notes that the complainant has requested the same personal information at a number of public authorities and this could be construed as the complainant seeking to

target an individual on a personal matter rather than seeking 'official information with the intention of making public bodies more transparent and accountable.' This is not the purpose of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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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