

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2016

Public Authority: Cambridgeshire and Peterborough CCG

Address: Lockton House
Clarendon Road
Cambridge
CB2 8FH

Decision (including any steps ordered)

1. The complainant has requested on behalf of his mother information relating his mother's healthcare via a valid power of attorney.
2. The Commissioner's decision is that Cambridgeshire and Peterborough CCG (the CCG) incorrectly applied section 40(2) of the FOIA to the requested information. However, the Commissioner finds that the information is exempt from disclosure by virtue of section 40(1) of the FOIA. This is because essentially the information being requested in the context of a power of attorney was the personal data of the applicant.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 10 November 2015, the complainant wrote to the CCG and requested information in the following terms:
*"I therefore request, under the auspices of the Freedom of Information Act, copies of any and all communications, irrespective of format that *you or have had, directly or indirectly with [redacted] concerning [redacted] from 2 January 2015 to 10 November 2015 inclusive."*
5. The CCG responded on 8 December 2015. It initially sought to rely on section 40(2) (third party personal data) to withhold the requested information. However, it did provide some information under the Data

Protection Act as the complainant had Power of Attorney (POA) for his mother.

6. The Commissioner has subsequently dealt with a separate Data Protection complain pertaining to the information provided in response to the subject access request.
7. Following an internal review CCG wrote to the complainant on 14 January 2016 and maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 January 2016 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if the CCG has dealt with the request in accordance with the FOIA.

Reasons for decision

10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
11. In its submission to the Commissioner the CCG stated it had considered the appropriateness of releasing the information under the FOI however, it was clear that the contents of the information contained sensitive personal data. It was the CCG's view that this information could not be disclosed. However, as the complainant had POA he was able to make a subject access request under section 7 of the Data Protection Act.
12. The CCG further stated that having reviewed its original response, it accepted that it should have applied section 40(1) to the requested information rather than section 40(2).

Section 40(1)

13. Section 40(1) of the Act provides that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

14. Effectively where information relates to the applicant themselves the individual will have rights under section 7 of The Data Protection Act 1998 (the DPA) to request that information and obtain it if no exemption is applicable. The central difference as regards the FOI Act is that under the DPA the exemptions to prevent disclosure are more limited, and disclosure is made only to the applicant. Under the FOI Act a disclosure of information is considered to be to the "whole world".
15. Although the information relates to the complainant's mother, as the complainant has POA he is in effect requesting as the applicant on behalf of his mother her personal data in his capacity as 'attorney' under the POA.
16. Under section 40(1) of FOIA information that is requested that constitutes the applicant's personal data is exempt information. This exemption is absolute; no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted.
17. Having considered the withheld information, the Commissioner is satisfied that, in the context of the request, the relevant information constitutes information that falls within the definition of personal data. The Commissioner has reached this conclusion on the basis that the information relates to medical care for the complainant's mother and that the complainant is acting on behalf of that person.
18. The Commissioner is satisfied that the requested information is the personal data of the complainant and it is therefore exempt from disclosure under the FOIA by virtue of section 40(1).

Right of appeal

19. 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

20. 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.
21. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF