

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2017

Public Authority: Western Health & Social Care Trust

Address: MDEC Building
Altnagelvin Hospital
Glenshane Road
Derry BT47 6SB

Decision (including any steps ordered)

1. The complainant has requested information from the Western Health & Social Care Trust ("the Trust") in relation to the Trust's dental department. The Trust disclosed most of the requested information to the complainant, however it refused to disclose the remainder, citing section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Trust has correctly applied section 40(2) of the FOIA to the withheld information and therefore the Commissioner requires no steps to be taken.

Request and response

3. On 7 April 2016, the complainant wrote to the Trust and requested information in the following terms:

"I wish to make a request for the following information/data from the WHSCT and would be very grateful for your assistance. I make this request under the.....Freedom of Information Act 2000. I believe that points 1-12 relate to the Freedom of Information Act.

- Details of the Trust Conflict of Interest Policy, whether any members of the dental department staff/management are required to declare any conflicts, details of any conflicts declared by any member of dental department staff/management.

- Minutes of Senior Dental Management meeting(s) held during 2016.
- Minutes of Senior Dental Nurses meetings with the Clinical Director between January 2012 and present.
- The names and positions within the Trust of members of interview panels for all Dental Officer and Senior Dental Officer posts within the WHSCT, where the interviews took place between January 2013 and present. Please specify which post (clinic location and whether DO/SDO) each group of interviews was for, along with the date and location of the interviews.
- Any information gathered within the dental department in September/October 2014 when deciding upon the termination of temporary hours worked by some staff including any analysis of appointment books or clinical need, any exemption sought by the dental department from this direction, confirmation that there were temporary hours carried out at Senior Dental Officer post level in October 2014, at 0.2WTE for a duration of less than 48 weeks and whether there was a written temporary contract in place for these additional hours at that time.
- Copies of e-mails and notes taken of any information sought or received by [name redacted], from September 2015 to present about the working pattern (related to proportion of working week spent on clinics, DHE etc.) of the retired dental therapist in SWAH.

Any communications, notes, minutes from meetings within the dental department, between dental department staff/management and other departments including HR and higher Trust management, and Unions regarding the Consultation on the Dental Therapist post in SWAH between December 2015 and present.

- Responses submitted to this consultation and replies sent to the respondents.
- Copies of costings that have been calculated in relation to the replacement of the Dental Therapist post in SWAH both in preparation for the consultation and any changes to them since, including the source(s) of the information and the date(s) on which the calculations were done.
- Details of number of posts held within the Dental department of the WHSCT-the total number of posts held at each job level together with the WTE.

- Number of staff in the Dental department who have had their post upgraded or who have moved to a higher Grade/post since 2011, details of each one to include the change in band/post, the WTE involved, when the upgrade took place and any backdating detailed, whether it was permanent or if temporary, the duration involved. Number of posts within the dental department where the post has been replaced/partly replaced with a post on a lower salary/band during the same time period and details of any such posts.
 - Salary scales within the WHSCT as at 01/01/2016 for the following posts: Dental Officer, Senior Dental Officer, Associate Specialist, Dental Clinical Director.”
4. The Trust responded on 22 June 2016. It disclosed some of the requested information, however it refused to disclose the remainder, citing sections 40(1) and 40(2) of the FOIA. It did indicate that it had provided the information which was exempt under section 40(1) of the FOIA to the complainant separately under the subject access provisions of the Data Protection Act 1998. That just leaves for consideration the information withheld under section 40(2) (“the withheld information”).
5. The complainant requested an internal review of the Trust’s decision on 6 July 2016. In particular, and in subsequent correspondence, she requested that it review its decision in relation to parts 5, 7, 8 and 11 of her request.

Following an internal review the Trust wrote to the complainant on 31 August 2016. It provided further information in response to part 5 of the request, namely notification of change (NOC) documents with fewer redactions than previously. In relation to parts 7, 8 and 11 of the complainant’s request it provided further information in response to part 7, stated that it was maintaining its position in respect of the redactions made to information provided in response to part 8, and provided some further information in response to part 11.

Scope of the case

6. The complainant contacted the Commissioner on 1 December 2016 to complain about the way her request for information had been handled.
7. The Commissioner has considered the Trust’s application of the exemption at section 40(2) of the FOIA to the withheld information, specifically to parts 7 and 8 of the complainant’s request.

Reasons for decision

8. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt if

a) It constitutes personal data which do not fall within subsection (1), and

b) either the first or second condition below is satisfied."

Is the withheld information personal data?

10. Personal data is defined by the Data Protection Act 1998 (the DPA) as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
11. The information being withheld under section 40(2) in this case contains the names of staff within the Trust and different comments made by staff members as part of a consultation process, from which individual staff members can be identified.
12. The Commissioner is satisfied that the information falls within the definition of personal data as set out in the DPA because it relates to identifiable living individuals.

Would disclosure contravene any of the Data Protection Principles?

13. 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. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

14. When a public authority discloses information under the FOIA, it is essentially disclosing information to the world and not just the person making the request.

15. The Trust has clarified to the Commissioner that the requested information was released to the complainant in full, except for the personal information which was redacted.
16. The Trust has informed the Commissioner that the staff names redacted were those of junior staff. The Trust considers it acceptable to disclose the names of senior staff, as they are considered to be more accountable.
17. The Trust has also informed the Commissioner that some of the withheld information consists of comments made by staff members as part of a consultation process. The staff members were not asked whether or not they consented to disclosure of their personal details as staff members involved in that process agreed to become involved on the understanding that any information imparted by them would be in confidence and would remain that way. Therefore, the Trust considers that the staff members would have a reasonable expectation that their personal information would not be disclosed to the public.

Consequences of disclosure

18. As the individuals would reasonably expect their personal information to remain confidential, as the names of junior staff are not routinely disclosed by the Trust, and also as they would not have agreed to take part in the consultation process if they thought comments attributable to them would be disclosed into the public domain, the Commissioner considers that disclosure of the withheld information would be likely to cause some distress to the individuals concerned, who had a reasonable expectation of privacy.

Balancing the legitimate rights of the data subjects with the legitimate interests in disclosure

19. The complainant has told the Commissioner that the consultation process has had a personal effect on her and that it is important that she receives all of the information she requested.
20. The Commissioner feels it relevant to point out that her considerations are not just whether the response should be provided only to the person who made the complaint. She can only consider whether the information can be provided to the public as a whole as disclosure under the FOIA is essentially a disclosure to the world, as stated in paragraph 15 above.
21. The Trust has informed the Commissioner that all relevant information

pertaining to the issue was disclosed to the complainant, bar the redacted personal details, the withholding of which did not in any way compromise the actual content of the information provided.

22. Having perused the requested information, the Commissioner accepts that the complainant has been provided with all substantive information relevant to the issues which are the subject of her request for information. Although the complainant may have a strong personal interest in the withheld information, there is no wider legitimate public interest in disclosing it which would outweigh the likely distress caused to the data subjects.
23. Therefore the Commissioner's decision is that section 40(2) of the FOIA is engaged in this case.

Other matters

24. The Commissioner notes that, in the Trust's initial response to the complainant's request, it cites sections 40(1) and 40(2) as a basis for non-disclosure of the withheld information. Some of that information consisted of the complainant's own personal data and was correctly withheld under section 40(1) but was provided to her under the DPA. However, following the complainant's request for internal review, which specifically referred only to certain parts of the withheld information, the Trust provided a response stating that information had been redacted from these parts under section 40(1) of the FOIA. This was an incorrect application of section 40(1), which applies only to the complainant's own personal data. The correct exemption should have been section 40(2).

The Trust acknowledged this error in later correspondence with the Commissioner. The Commissioner trusts that the Trust will continue to be vigilant regarding the correct application of exemptions under the FOIA to requested information.

Right of appeal

25. 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

26. 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.
27. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF