

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 August 2017

**Public Authority:** Devon Partnership NHS Trust  
**Address:** Wonford House  
Dryden Road  
Exeter  
Devon  
EX2 5AF

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the training undertaken and qualifications achieved by two members of staff at Devon Partnership NHS Trust (the Trust). The Trust 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 Trust has correctly applied this exemption.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

### Request and response

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4. On 1 December 2016, the complainant wrote to the Trust and requested information in the following terms:

*"I would like information regarding 2 employees of the partnership NHS Trust.*

- *[Redacted name 1] – Senior Social Worker*
- *[Redacted name 2] – Lead Social Worker [redacted]*

*I would like to know the dates that they have undertook (sic) training for doing assessments under the Care Act 2014 section 9 and also the*

*training they have received for implementation of Care Act 2014 and any qualifications so achieved."*

5. The Trust responded on 13 December 2016, refusing to provide the requested information citing section 40(2) of the FOIA as its basis for withholding the information.
6. The complainant requested an internal review on 19 December 2016. Following an internal review, the Trust wrote to the complainant on 16 February 2017, maintaining its original position. The Trust, however, assured the complainant in its internal review decision that the two employees concerned are suitably trained and qualified to fulfil their role at the Trust.

### **Scope of the case**

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7. The complainant contacted the Commissioner on the 21 February 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case is to determine whether the Trust is entitled to rely on section 40(2) as a basis for refusing to provide the withheld information.

### **Reasons for decision**

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#### **Section 40(2) – third party personal data**

9. This exemption provides that any third party personal data is exempt from disclosure, if that disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (DPA).

#### **Is the withheld information personal data?**

10. In order to rely on the exemption provided by section 40(2), the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*"personal data" means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual'.*

11. The information requested in this case relates to the training undertaken and qualifications achieved by two members of staff at the Trust. In the Commissioner's view it is clear that the withheld information 'relates' to living individuals, who are the focus of the request and it is therefore their 'personal data'.

### **Would disclosure breach the Data Protection Principles?**

12. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is 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.
13. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

14. In its submission to the Commissioner, the Trust stated that the information sought relates to the individuals in their professional role. However, the Trust considers that disclosing this level of detail about individual employees' training would be overly intrusive and would not be within the reasonable expectation of the staff. The Trust has confirmed that neither individual holds a senior position within the Trust or holds a public facing role representing authority of senior managers. The Trust stated that professional registrations can be verified by other means through professional bodies.
15. The Trust has not asked the employees concerned whether they are willing to consent to the disclosure of their personal data, as it considers that sufficient assurance has been given to the complainant and would not consider it appropriate in the circumstances to release the information.
16. In this case, as the individuals do not have a senior position or public facing role at the Trust, the Commissioner is of the view that they would not have a reasonable expectation that this level of information about them would be disclosed.

## **Consequences of disclosure**

17. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may generally 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.
18. The Trust has explained that it receives similar questions from time to time from individuals looking for redress for dissatisfaction with the Trust. The Trust has gone on to explain that there have been occasions where individuals who are dissatisfied by the level of care received have used FOIA requests to target individual members of staff.
19. The Trust is of the view that to release the withheld information would mean that there is a high likelihood that such information would be used to put unreasonable pressure on individual members of staff.
20. The Trust did not provide any specific evidence in support of its claim that members of staff have been targeted in the past after releasing information in response to FOIA requests. Nonetheless, the Commissioner accepts that the nature of the information could lead to the employees being put under unreasonable pressure and this is an additional factor that makes the disclosure unfair given the distress this could cause.

## **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

21. The Commissioner accepts the legitimate interests in disclosure include the general public interest in transparency of public bodies, and in particular the expenditure of public money and performance of public bodies, (including in relation to alleged mismanagement by senior staff). An informed and involved public helps to promote good decision making by public bodies and ensures trust and confidence in the governance and processes within those bodies.
22. However, 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 individual. 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.
23. The complainant has not specified to the Commissioner why he is requesting the information. She does, however, acknowledge that there

is a legitimate interest in ensuring that employees are sufficiently trained and qualified to undertake their role at a Trust.

24. The Trust has stated that there is no specific mandatory training for staff and it does not consider that there is sufficient justification for disclosure in this case balanced against the prejudice to the legitimate interests of the two employees.
25. The Trust, however, has assured the complainant in its internal review decision that the two employees concerned are suitably trained and qualified to fulfil their role at the Trust.
26. In this case, whilst the Commissioner accepts that the specific information requested may be of interest to the complainant, she is not convinced that its disclosure is of sufficient wider public interest to warrant overriding the rights and expectations of privacy of the individuals to whom that information relates.

## **Conclusion**

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27. In view of the above, the Commissioner has concluded that to disclose the withheld information would be unfair and in breach of the first principle of the DPA. The Commissioner therefore finds that Trust has correctly applied section 40(2) of the FOIA to the withheld information by virtue of section 40(3)(a)(i).

## **Other matters**

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28. The Commissioner notes that the Trust's response to the internal review exceeded 40 working days. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. The Commissioner therefore recommends that the Trust review the Section 45 code of practice<sup>1</sup>.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**