

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2019

Public Authority: North East Ambulance Service NHS Foundation Trust

Address: The Waterfront
Bernicia House
Goldcrest Way
Newcastle upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. In two requests, the complainant has requested information associated with North East Ambulance Service's ambulance provision on a specific date, its deployment of vehicles, particular targets and a policy. With regard to request 1, North East Ambulance Service (NEAS) provided some information and confirmed it does not hold some of the information. NEAS relied on section 12(1) (cost exceeds appropriate limit) to refuse to comply with elements of part 2 of request 1 and a second request the complainant subsequently submitted. NEAS considered some information requested in part 2 of request 1 is exempt information under section 24(1) (national security) and/or section 40(2)(personal data), with the public interest favouring maintaining the section 24 exemption. NEAS subsequently withdrew its reliance on section 12(1) with regard to the second request.
2. The Commissioner's decision is as follows:
 - NEAS has now complied with section 1(1) of the FOIA with regard to request 2 but breached section 10(1) as it did not comply with section 1(1) within the required timescale.

- NEAS can rely on section 12(1) of the FOIA to refuse to comply with elements of part 2 of request 1. NEAS has not breached section 16(1) of the FOIA with regard to this request.
 - Some information falling within the scope of part 2 of request 1 is exempt information under section 24(1) of the FOIA and the public interest favours maintaining the exemption.
 - Elements of the information falling within the scope of part 2 of request 1 are exempt information under section 40(2), including some of the elements also covered by the section 12(1) exemption.
3. The Commissioner does not require NEAS to take any remedial steps.

Request and response

4. On 29 October 2018 the complainant wrote to NEAS and requested information in the following terms:

"1. A list of vehicles that the Trust had on Saturday 20 December 2015.

*2. A download from the NEAS Computer Aided Dispatch (CAD) system for Saturday 20th December 2015 to show the full deployment of **ALL** the NEAS vehicles for the period **09:00 hours to 14:00 hours** and their activity during this time period please. I would like this information in an Excel or CSV file format (which I understand the CAD system can easily generate) so that it can be filtered / sorted. I appreciate that to maintain confidentiality the patient name column will need to be redacted from the download but I would like **ALL** the other data columns that show the activity of the vehicles by time. For example I would envisage the data download will include the following type of information and more:*

[Table showing columns with the following data fields: Vehicle ID, Type of response sent, Depot, Vehicle Status, Date, Time, Call ID, Triaged as Call Type, Escalation, Call Location, Call Received from Patient, Call Type, Patient Age, Nature of Injury, Etc – other data from download].

I would expect that the total number of vehicles in this data download will match with the operational vehicles in (1) above by type."

3. Targets set by each Clinical Commissioning Group (CCG) [a] for Green 1, 2 and 3 call types and the [b] Trust's performance, and [c]

*sanctions given regarding these targets for the 2015/16 financial year.
[d] If none, how was [sic] the Trust determined good value for money.*

4. A copy of the policy for despatching [sic] more than one ambulance to a "RED" emergency. These instances highlighted in the response to limb 2 of the request."

5. NEAS responded on 28 November 2018. NEAS advised the complainant that it does not hold information within the scope of part 1 of the request. It gave the complainant some general information relevant to this part and advised him how he might find other information of some relevance on its website.
6. NEA said it also did not hold information within the scope of part 2 of the request.
7. NEAS released information within the scope of part 3a and 3b – a report – and advised that there were no national or local standards set for Green calls. With regard to part 3c, NEAS advised that the contract in place for 2015/2016 between it and the 12 regional Clinical Commissioning Groups then operational in the north east region did not include financial penalties or sanctions attached to Green 1, 2 and 3 call responses. With regard to part 3d, NEAS advised how it determined value for money.
8. NEAS released a policy document in response to part 4 of the request.
9. The complainant requested an internal review on 30 November 2018, and posed a series of "clarification questions". With regard to part 1, he asked for further guidance on how to access the published information NEAS had directed him to.
10. He also asked for further explanation on how many of NEAS' vehicles were operationally available to those requiring an ambulance service. He suggested a second table that NEAS might complete, with particular data fields. In the Commissioner's view, these questions constitute a new request.
11. With regard to part 2, the complainant queried whether NEAS did not keep any records at all of daily ambulance activity, and confirmed that he was seeking a copy of the activity for all the ambulances (of whatever type) from whatever source record NEAS keeps but preferably in an Excel or csv file format. The complainant also asked NEAS to highlight in the download requested in part 2 such instances where two or more ambulances were deployed to a single incident. The Commissioner will consider this request as part 2a.

12. The complainant confirmed he was satisfied with NEAS' response to part 3 of the request.
13. With regard to part 4, the complainant questioned whether the document NEAS had sent to him addressed his request. He asked NEAS to either send him the correct document, confirm that it does not hold the specific document requested or confirm that particular cases stated in the document provided are they only type of cases where two or more ambulances are deployed.
14. Following an internal review NEAS wrote to the complainant on 14 January 2019. With regard to the complainant's queries about its response to part 1 of the original request, NEAS clarified the web link it had provided and identified which of the published FOI responses mentioned the word 'fleet'.
15. NEAS said it was unable to provide a breakdown of the data requested in request 2 of 30 November 2018 (ie in the second table the complainant had suggested) within the cost limit under section 12(1) of the FOIA. It said that its computer system is not configured to search for this information automatically and so it would be necessary for each individual vehicle record to be reviewed manually after retrieving them from storage. It estimated that such a review would take 20 minutes for each record. Noting its duty under section 16(1) to provide advice and assistance, NEAS provided information on the fleet size at 1 August 2015 and gave a breakdown of the type of vehicles in its current fleet.
16. With regard to part 2 of the original request, NEAS said that: its systems do not hold the information requested in this part; that it would need to create a new database to address this part and that to carry out additional work to answer this question would exceed the cost limit under section 12(1) of the FOIA. NEAS said that, if necessary it would also rely on sections 40(2) (personal data) and 24 (national security) of the FOIA to withhold any information identified.
17. With regard to the complainant's request for information on instances where two or more ambulances were deployed – part 2a – NEAS confirmed it was relying on section 12(1) as per its response to part 2.
18. With regard to part 4 of the original request, NEAS confirmed it does not hold the policy the complainant has requested.
19. As a result of the Commissioner's investigation, NEAS reconsidered its position and wrote to the complainant again on 29 July 2019 with regard to part 2 of the request of 29 October 2019. NEAS provided some information in the form of a table with information provided under

particular data fields; namely the 'Type of Vehicle', 'Status', 'Date/Time of Status' and 'Date/Time Updated' fields.

20. NEAS relied on the exemptions under sections 40 and 24 to refuse to provide the information under the remaining data fields the complainant had requested in part 2 and also relied on section 12 to refuse to comply with the majority of these fields. NEAS noted that there were 4,213 lines of data in the information that it was providing. It said that the time of the call received from the patient and the call type are held on different systems and locating, extracting and compiling this information would bring the cost of compliance above the appropriate limit.

Scope of the case

21. The complainant first contacted the Commissioner on 9 February 2019 to complain about the way his request for information had been handled, confirming on 6 June 2019 that his focus was on NEAS' reliance on section 12 for parts of his request. Following NEAS' further response of 29 July 2019 the complainant confirmed on 6 August 2019 that he remains dissatisfied, both with NEAS' reliance on section 12 and its reliance on particular exemptions.
22. The Commissioner will first consider whether NEAS has complied with section 1(1) with regard to the complainant's request of 30 November 2018. She will then consider whether NEAS can rely on section 12(1) to refuse to comply with part 2 of the complainant's request of 29 October 2018 and part 2a of 30 November 2018. She will also consider whether NEAS complied with its associated duty under section 16(1) with regard to that request. Finally, the Commissioner will consider whether some information covered by part 2 of the first request is exempt information under section 24(1) and/or 40(2) and the balance of the public interest where relevant.

Reasons for decision

REQUEST 2

Section 1 - General right of access to information held by public authorities / Section 10 – Time for compliance

23. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

information communicated to him or her if it is held and is not exempt information.

24. Section 10(1) requires an authority to comply with section 1(1) as soon as possible and within 20 working days following the date of receipt of the request.
25. In part 1 of his request of 29 October 2018, the complainant had requested a list of vehicles that the Trust had available on one specific date in 2015. The Trust had confirmed it does not hold this information.
26. In his request for a review on 30 November 2018 the complainant submitted the following second request with regard to NEAS' response to part 1:

"A list by vehicle type and function of the 500+ vehicles that NEAS had on Saturday 20th December 2015 and how many of those by type were operational and how many were not serviceable and why they were not serviceable on that day. For example a table as follows please:

[Table showing columns with the following data fields: Vehicle Type, Vehicle Function, No. of Vehicles on 20/12/2015, No of Vehicles NOT Operational on 20/12/2015 and Reason vehicles were NOT Operational, against different types of vehicles such as Rapid response cars and urgent care vehicles].

Of the 500+ vehicles NEAS has my interest was how many are operational available to respond to patients requiring an ambulance service. Can you clarify the position please? It seems from what you say in your reply that of the 500+ vehicles the Trust only has 95 ambulances to respond to 999 and 111 calls i.e. to take a patient who has had say a fall and broken something, heart attack or other accident that requires them to be taken to hospital. Is that correct or can you explain / expand please?"

27. As mentioned, the Commissioner considers this to have been a new request as it asks for information that was not requested on 29 October 2018.
28. In its review of 14 January 2019 NEAS provided a response to the above request. It confirmed that it was unable to provide the breakdown the complainant had suggested and was relying on section 12(1) to refuse to comply with this request.
29. NEAS confirmed to the Commissioner on 3 October 2019 that it had reconsidered this request and withdrew its reliance on section 12. Its final position is that it does not hold information on what vehicles were

not operational on 20 December 2015 and has released all the relevant information it holds. NEAS confirmed that all the information that it holds that is relevant to this request ie that concerns operational vehicles on the specified date – was, in effect, released to the complainant in its correspondence on 29 July 2019 and its internal review response.

Conclusion

30. As well as information on non-operational vehicles on the date in question, the complainant's suggested table above requested information on vehicle type, vehicle function and number of vehicles, against particular types of vehicles.
31. In the above conversation with the Commissioner, NEAS confirmed that it did not have a fleet management system configured to record the information the complainant has requested until 2018. It therefore does not hold information on non-operational vehicles on the date in question, in 2015.
32. The information NEAS released in its response of 29 July 2019 – which was to part 2 of request 1 – included information on vehicle types. The spreadsheet NEAS provided also indicates the number of vehicles operational on that day in December 2015. And a Google search is likely to identify the acronyms NEAS uses in the sheet: ACP stands for Advanced Care Paramedic; PTS for Patient Transfer Service and HART for Hazardous Area Response Team, for examples. In its internal review on 14 January 2019 it also provided the complainant with information on its fleet size in 2015 with a breakdown of that fleet.
33. While not in the format the complainant suggested, in the Commissioner's view the spreadsheet that NEAS released to the complainant on 29 July 2019 and its internal review response address some elements the complainant's request of 30 November 2019. On the balance of probabilities, the Commissioner finds that this is all the information that NEAS holds that falls within the scope of this request. This is because, as NEAS has explained, the management system it had in place in 2015 did not record all the types of information the complainant has requested.
34. The Commissioner finds that NEAS has now complied with section 1(1) of the FOIA, but it breached section 10(1) as it did not communicate the information it holds within 20 working days of the request.

REQUEST 1

Section 12 - Exemption where cost of compliance exceeds appropriate limit

35. Section 12(1) says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so.
36. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to NEAS. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
37. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
38. In part 2 of request 1 of 29 October 2019, the complainant requested a download from NEAS' computer-aided despatch (CAD) system, showing particular types of information – data fields - provided in a particular format. In part 2a of the request the complainant asked NEAS to highlight in the download instances where two or more ambulances were deployed to a single incident.
39. In its review, NEAS had relied on section 12(1) to refuse to comply with these parts and also indicated that the exemptions under section 40 and 24 could be engaged.
40. In its further response to the complainant on 29 July 2019, NEAS provided some of the data fields the complainant had requested in part 2; namely, information on the type of vehicle and the date and time for each of the vehicle's different statuses on 20 December 2015 between 0900h and 1400h.

41. NEAS said it was relying on section 12, 24 and 40 with regard to the other fields the complainant had requested.
42. In its submission to the Commissioner NEAS has confirmed that the other fields that the complainant had requested are: Vehicle ID; Triage of each call; Escalation triage of each call; Call Location; Time call received from patient; Call type; Patient age; Nature of patient's injury; and any other information held on its system.
43. NEAS says it is unable to provide this information as it is not held on its CAD system. Nor is this information stored in a format that would allow it to match patient records with the CAD information already provided to the complainant. NEAS says its databases are not designed to produce this information as it does not use it to make decisions about the services that it operates. This information is archived on a database that NEAS says it has not used since August 2016 when it moved to a new system.
44. NEAS has told the Commissioner that the data does not exist in the requested format; therefore a member of staff would have to set up and write code in order for it to be retrieved. The data would need to come from at least four different sources on three different servers and would be retrieved using Structured Query Language (SQL) coding language on SQL Server Management Studio by a skilled senior information analyst.
45. NEAS says that two of the data sources are no longer updated as they have been replaced by new solutions; therefore knowledge of these is limited and the data itself is archived. Accessing archived data sources requires extra vigilance to ensure the data retrieved is correct and the processes followed are appropriate. This is because the data is often structured and populated differently on older, legacy systems. All work carried out by NEAS' informatics department goes through a series of internal checks designed to ensure the information is accurate and logic and decisions made are sound. This means that an additional skilled member of staff must review all code produced prior to release. Again, due to the requirement for legacy data and the complexity of the logic/operational processes, this will be more time consuming as the reviewer will need to fully understand the reasoning for decisions and coding and may need to be walked through this process by the primary analyst.
46. NEAS has described to the Commissioner the fields it would be possible to provide, while noting that due to patient identifiable information these may be restricted. (These fields are discussed under the section 24 and section 40 analyses). The fields being discussed in the section 12 analysis are as follows:

47. **Resource data:** NEAS says that this information has already been provided to the complainant and would come from the SQL database resource table. The data warehouse would not be used as NEAS says it does not report this information routinely. Therefore it would use the archived source system tables that directly populate the frontend 'Resource Status Enquiry' view. This would cover the following fields:
- Vehicle ID
 - Depot (associated station)
 - Vehicle Status
 - Date/Time of Status
 - Call ID
48. Having reviewed the information NEAS released to the complainant, the Commissioner notes that this did not include Vehicle ID, Depot or Call ID, which NEAS seems to suggest above. The released information is detailed at paragraph 19. NEAS confirmed to the Commissioner on 30 September 2019 that it has not released information relating to the above three fields: Vehicle ID, Depot or Call ID because it considers this to be exempt information. On 29 July 2019 it had released Vehicle Status and Date/Time of Status data.
49. NEAS' submission goes on to explain that the above resource data dataset would then need to be joined to a separate data source on a different server that contains the vehicle type. Due to the age of the data, this would require some investigation to identify a suitable field as +Fields covered:
- **Type of Response sent**
50. An additional join would need to be created to a new table to return data from the CAD system. This would return the following fields:
- **Triaged As/Call Type and Escalation Code:** NEAS has explained that this will require extensive investigation as to how to retrieve. The process for upgrading and downgrading calls has changed over time and is subject to different operational processes depending upon specific circumstances. NEAS would therefore need to understand what processes were in place in December 2015 and the calculation for this would likely require the use of multiple fields. If a call has the code changed mid-call we would not be able to determine whether that was due to changing patient symptoms or some form of clinical /operational 'escalation'. In addition, the CAD system does not have the functionality to 'link' multiple calls generated for operational purposes (so potentially for upgrading). Therefore there may be

multiple calls listed for the same patient that are as a result of system functionality. In addition identifying the time of escalation (call upgrade) would require investigation and the source of this data would differ based on the process followed. If NEAS was to look into the actual triage of the call, this data is rarely used (as it does not form part of its mandatory national reporting) and would require a full investigation (this may be unavailable). There is a potential that detailed system audit information would be required and the format that this is stored in reduces its usefulness without additional coding. Potential data sources: Triage tables, call audit table, call table

- **Call Location:** would require some investigation as to which is the most suitable address line to use to ensure the best completion rate. NEAS would also need to review what was held in this field in rural areas (to ensure it is not too granular, ie identifiable, and that the field is populated)
 - **Call Type**
51. NEAS has gone on to explain that an additional join to the Electronic Patient Report Form (ePRF) table would be required to populate the remaining fields the complainant has requested. Patient Age is held on the CAD system, however completion rates vary. 111 calls are more likely to have correct age details whereas 999 calls are likely to have this missing at the point of call due to the nature of the emergency situation. In order to provide the most complete dataset which would not skew the information, ePRF information would be used. This contains additional patient information that is gathered on arrival, in conjunction with CAD data where there is not an arrival on scene or NEAS is unable to join to the ePRF (for a number of reasons such as paper, connectivity issues for the electronic device, missing records, crew without electronic device).
52. The Symptom Group is also held on CAD, however this is not always populated with information (high acuity calls for example and calls from the police) are not triaged by design to a point of achieving a symptom group. The system NEAS uses to assess a 999 and 111 callers' health, known as NHS Pathways, is a triage system and not a diagnostic one. Again, to provide a fuller dataset, avoid the exclusion of certain patient cohorts and provide the actual crew impression rather than the key symptom experienced at time of call, ePRF data may be the more appropriate source for cases where NEAS arrived on scene, with additional information coming from symptom group. The system that collected this data is no longer in use and the database is archived and not updated. Retrieving any data from this data source would require care and investigation to ensure appropriate fields are being accessed

and data is being joined correctly. Potential data sources include archived ePRF data and CAD call table. This would potentially return the following fields, although investigation would be required:

- **Patient Age**
- **Nature of Injury (impression)**

53. NEAS notes that the request then calls for '**etc – other data from download**'. It says there is no download for the data requested therefore it is unable to provide this. The data sources accessed to create this dataset will contain hundreds of columns, many of which have patient identifiable information and are of limited use therefore NEAS says it would not add in any non-specified information.
54. NEAS says it asked two separate information analysts to review the amount of time needed to carry out the work described above to answer the complainant's questions. Their estimates range from 48 to 60 hours' work. NEAS included the analysts' calculations in its submission and the Commissioner has reviewed these. The analysts have estimated the amount of time to retrieve each of the various fields in question eg retrieving the 'Type of Resource Sent' has been estimated as taking up to one working day (eight hours); 'Triaged As, Call Type and Escalation Mode' as taking from 12 hours to three days; and peer reviewing as taking from six hours to two days. Adding the least of all the estimates up together generates a total of approximately 42 hours; well in excess of the 18 hours provided by section 12(1).

Conclusion

55. In its response to the complainant of 29 July 2019, NEAS confirmed that it was relying on section 12 with regard to the following data fields:
- Triaged As/Call Type
 - Escalation
 - Call Location
 - Call Received from Patient
 - Call Type
 - Patient Age
 - Nature of Injury
 - Any other data from download
56. With regard to the above information requested in part 2 and 2a of request 1, the Commissioner has taken account of the following factors:
- the age of the information in question – three years old at the time of the request

- the information in question – particular data fields - is not held on NEAS' CAD system
- NEAS' databases are not designed to produce this information
- the information is on a database that is archived
- the data would need to come from at least four different sources, and two of the data sources are no longer updated
- a process of checks, review and vigilance would be necessary; and
- the estimates of the length of time that would be needed to retrieve the information were provided by two information analysts.

57. The Commissioner considers that NEAS' time estimates are credible and she is satisfied from NEAS' submission that it would exceed the limit under section 12(1) to comply with the above elements of part 2 of request 1, and with part 2a for particular information to be highlighted.

Section 16 – advice and assistance

58. Under section 16(1) of the FOIA, a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
59. With regard to part 2 and 2a of request 1, given the specificity of the complainant's request and the circumstances described in paragraphs 43 - 45, the Commissioner does not consider that NEAS could have helped the complainant to meaningfully refine his request so as to bring complying with it within the cost limit. NEAS did go on, however, to provide the complainant with information under some of the data fields he has requested. It also provided the complainant with information on the fleet size at 1 August 2015 and gave a breakdown of the type of vehicles in its current fleet.
60. Having considered its handling of the request and all the circumstances, the Commissioner finds that NEAS provided the complainant with such advice and assistance as was reasonable and that no breach of section 16(1) has occurred.

Section 24 – national security

61. Under section 24(1) of the FOIA an authority can refuse to disclose requested information in order to safeguard national security.
62. NEAS is relying on this exemption with regard to elements of part 2 of request 1, which concerns information specific to one date in December 2015; namely, the data fields Vehicle ID and Depot.

63. NEAS has explained to the Commissioner what the 'Vehicle ID' and 'Depot' fields refer to. These explanations are given in the Confidential Annex to this notice.
64. In its internal review of 14 January 2019, NEAS indicated that if the Commissioner was to find that it could not rely on section 12(1) with regard to part 2 of request 1, it considered that it would withhold certain information covered by that part under section 24. It said that the ambulance service is a category one responder and makes up an essential element of the national resilience of the UK. NEAS advised that, in her published guidance, the Commissioner recognises that terrorists can be highly motivated and may go to great lengths to gather intelligence. NEAS said that on these grounds it was withholding what seems harmless information on the basis that it may assist terrorists when pieces together with other information they may obtain.
65. In its response to the complainant of 29 July 2019, NEAS confirmed that it considered the 'Vehicle ID' data field engages the section 24 exemption only; that the 'Depot' field engages the section 24 and 40 exemption and that the 'Any other data from the download' field engages these two exemptions and section 12. 'Any other data from the download' has been dealt with under the section 12 analysis; the focus in this section is on Vehicle ID and Depot.
66. In its submission to the Commissioner, NEAS has confirmed that it is a listed category one responder under the Civil Contingencies Act 2004. It forms part of the UK's national resilience and contingency in responding to emergency situations. As such NEAS says it is very mindful of information placed in the public domain that may assist enemies of the state in planning an attack on UK soil.
67. NEAS confirmed to the Commissioner what it told the complainant; namely that it has followed her guidance, which states that "*while it is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK*". NEAS says it is aware that the Commissioner recognises terrorists can be highly motivated and that it is withholding what may seem to be harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
68. NEAS explained that its rationale is based on concerns that releasing details about vehicle identities, movements, locations, depots and status provides valuable information to those people wanting to plan an attack in the UK. They could choose both location and timing to ensure the slowest ambulance response to a planned attack, maximising the harm caused.

69. In addition, NEAS says that the information withheld under section 24 is valuable to terrorists who plan to use an ambulance as a 'Trojan horse' in their planned attack. This tactic has been used by terrorists abroad and it has been exercised by NEAS in the last 18 months as part of the Northumbria Local Resilience Forum in the north east. NEAS says it has received guidance and advice from Northumbria Police on the '*Management of Emergency Services' Vehicle Access in to Crowded Event Areas*' (a copy of which it provided to the Commissioner).
70. NEAS argues that the length of time that has passed between 20 December 2015 (the date referred to in the request) and the complainant's request does not dilute the use of the exemption, or the seriousness and sensitivity of the information being requested. Instead, NEAS says, its concern is that publishing this data – Vehicle ID and Depot – would set a dangerous precedent for others to ask for information – including more up-to-date data – which could be used maliciously.
71. Information on Vehicle IDs and Depots – even for those vehicles operational in 2015 – could, NEAS has explained, be used to plan a terrorist attack in the following ways:
- Unique IDs could be duplicated and imitation vehicles used to obtain access to restricted areas
 - It could be used to identify specific vehicle locations and gain unauthorised and illegal access to vehicles for use within a terrorist attack
 - Coupled with Call Location and Status the information gives an indication of the utilisation patterns of vehicles. This information could be used by terrorists to plan the commandeering of a vehicle or to plan a terrorist attack in an area which may have a lower level of operational vehicle cover (ie where it may take an ambulance response longer to arrive on scene). NEAS says that whilst it could be argued that operational logistics and call patterns may have changed since 2015, it would set a precedent for the release of more up-to-date information should this be requested under the FOIA.
 - Northumbria Police issued guidance and advice which pointed to the very real risk of emergency service vehicles being used for terrorist purposes.
72. NEAS subsequently explained to the Commissioner on 3 October 2019 that the lifespan of an ambulance is nine years. After nine years ambulances are stripped out and the vehicle can be re-sold. Another

aspect of how NEAS manages its ambulances is explained in the Confidential Annex to this notice.

Conclusion

73. First, the Commissioner makes the point that releasing information in response to a particular request does not set a precedent. An authority should handle each request it receives on a case-by-case basis; just because information was released on one occasion does not mean that similar information should be released on another occasion.
74. The Commissioner notes that the request for Vehicle ID and Depot information concerns ambulance activity for one day in December 2015; three years prior to the date of the request. However for the reasons discussed in the Confidential Annex, the Commissioner is satisfied that that information would have still have been sensitive, with regard to the application of section 24, at the time of the request in 2018.
75. Having reviewed NEAS' submissions and spoken to it at length about this element of its submission, the Commissioner is satisfied that NEAS is correct to withhold the Vehicle ID and Depot data fields under section 24(1). Even without other data fields this information could be used to plan and carry out, for example, a Trojan horse attack; that is, a seemingly ordinary ambulance that is carrying explosives.

Public interest test

Public interest in releasing the information

76. The complainant has expressed the view that NEAS should be open and transparent about its activities. He has not provided any public interest arguments for the release of the specific information in question.
77. NEAS has acknowledged that disclosing the information would provide the public with further information regarding the provision of emergency vehicles across the north east area, at least with respect to the base location of the vehicle. It says this would provide some transparency regarding how this publicly-funded service is configured to deliver its 999 emergency function to patients.

Public interest in maintaining the exemption

78. NEAS argues that revealing the Vehicle IDs and Depots would provide valuable information to individuals who may wish to use this information to plan a terrorist attack. It has given the Commissioner examples of how they might do this which she has detailed above.

79. Given the actual use of ambulances as weapons in terrorist attacks in other countries, NEAS considers that ambulances present realistic and plausible targets. NEAS says this had a significant impact in respect of the weighting of the public interest arguments, coupled with the advice it had received from the police.

Balance of the public interest

80. In his correspondence to the Commissioner of 9 February 2019, the complainant takes umbrage that NEAS' application of section 24 appears to suggest that it considered he is a potential terrorist. However, release under the FOIA is, in effect, release to the wider world. So while the complainant's intentions may be completely benign, the information would become available to others whose intentions are not.
81. NEAS has demonstrated its openness by actively publishing information relevant to the request; by providing the complainant with some of the information he requested and by directing him to other relevant information. The requested information in dispute here – specific data fields - may be of interest to the complainant but the Commissioner does not consider that it has any wider public interest. Whereas there is a very strong public interest in the risk to public safety being kept as low as possible. The Commissioner is therefore satisfied that the balance of the public interest favours maintaining the section 24(1) exemption in this case.

Section 40 – personal information

82. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the applicant, and a condition under either section 40(3A), 40(3B) or 40(4A) is also satisfied.
83. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA').

Is the information the personal data of a third person?

84. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
85. Sections 3(2) and (3) of the DPA define an identifiable living individual as one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

86. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
87. Information about individuals' health – as in this case - is categorised as special category personal data which must be handled with particular caution.
88. In addition to the Depot data field which has been found to engage the section 24 exemption, NEAS is relying on section 40(2) with regard to another element of part 2 of request 1 (which again concerns information specific to one date in December 2015); namely, the Call ID data field. NEAS considers that certain other of the requested data fields also engage section 40(2); namely Triage Type, Call Escalation, Call Location, Call Received from Patient ie Call Time, Patient Age and Nature of Injury. While the Commissioner has found that NEAS is not obliged to comply with the request for these data fields under section 12, she has nonetheless also taken account of them in this section 40 analysis.
89. In its submission to the Commissioner, NEAS has explained that a Call ID is an eight-digit number that is a unique identifier for a patient's health record and is created by the ambulance service at the time of the patient's call (either 111 or 999).
90. In its conversation with the Commissioner on 3 October 2018, NEAS explained that this number is then carried over to any hospital record associated with the patient. It would therefore exist in the hospital's system although the hospital would generate and use its own identifying number.
91. NEAS acknowledges that the likelihood of someone being able to identify an individual from the Call ID number might be remote, particularly given the passage of time from 2015 to October 2018. However it notes that on 29 July 2019 it released information associated with types of vehicles and the status of those vehicles (for 20 December 2015). It considers that if someone was sufficiently motivated to do so, they could be able to identify a specific individual. With access to particular systems or other information about an individual, they could be able to do this by combining the Call ID information together with other information that has been released and the other data fields withheld under section 40(2). NEAS says that it cannot categorically state that it would not be possible to do this.
92. NEAS has told the Commissioner that it responds across 3,200 square miles of its service area, serving a population of 2.6 million in the North East region. It notes that the volume of activity is obvious in the data it

has already provided to the complainant. It does not agree with the complainant that this is anonymised data. It is NEAS' view that, on the contrary, taken all together publishing this data poses a significant risk that its ambulance patients will be identified, directly or indirectly.

93. In its submission to the Commissioner, NEAS has noted that the DPA defines an identifiable living individual as one who can be identified, directly or indirectly by reference to an identifier such as an identification number. It points out that the Call ID in this case is such an identification number.
94. The Commissioner is satisfied that the disputed information relates to third party individuals because it concerns their use of an ambulance service. The Commissioner's role is to safeguard people's personal data. Second therefore, she is persuaded by the reasons NEAS has given that, although the probability may be low, it could be possible to identify an individual from this information combined with other published information, and other factors, by someone who was motivated to do so. The Commissioner therefore finds that the data fields in question fall within the definition of 'personal data' in section 3(2) of the DPA and moreover is special category personal data.
95. The fact that information constitutes the personal data of identifiable living individuals does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection (DP) principles in line with section 40(3A) of the FOIA. The Commissioner considers that the most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

96. Article 5(1)(a) of the GDPR states that: "*Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject*".
97. In the case of an FOI request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
98. In order to be lawful, one of the lawful bases listed in Article 6(1) of the General Data Protection Regulation must apply to the processing. It must also be generally lawful.
99. The lawful basis most applicable in this case is basis 6(1)(f) which states:

"...processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"

100. In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- (i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information
- (ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question
- (iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject (that is, the ambulance service users).

101. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Is a legitimate interest being pursued?

102. In considering any legitimate interest(s) in disclosing the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

103. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

104. In his correspondence to the Commissioner of 9 February 2019 the complainant states that the whole point of the FOIA is to ensure public bodies are transparent about their activities and that people have a right to know about their activities. He argues that the requested information – relating to ambulance response times – is of major public interest. The complainant's interest seems to be an interest in the broad principles of accountability and transparency, rather than stemming from a case-specific interest. Nonetheless, the Commissioner acknowledges that this is a legitimate interest.

Is disclosure necessary to meet the legitimate interests?

105. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
106. NEAS has released to the complainant a good deal of information that falls within the scope of his request. In addition, the Commissioner notes that the complainant has an interest in NEAS response times; presumably response times as they were at the time of the request. However, she notes that the complainant requested information relating to three years prior to his request. She does not consider that data on response times across five hours on one day in 2015 alone is likely to shed much light on NEAS response times in October 2018.
107. Moreover, NEAS has advised that ambulance response time data is publicly available from NHS England and NEAS' published Board papers.
108. The Commissioner therefore considers that the complainant's interests have been satisfied through the information NEAS has released in response to his request and which it and NHS England actively publishes. In her view the necessity test has not been met ie disclosure of the data field is not necessary to meet the complainant's legitimate interests. It is therefore not necessary to consider the balancing test at (iii) above.

Conclusion

109. The Commissioner is satisfied that there is no Article 6 basis for processing and so the disclosure of the data fields in question would not be lawful. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
110. The Commissioner has decided that NEAS is entitled to withhold the following data fields under section 40(2) of the FOIA, by virtue of section 40(3A): Call ID, Triage Type, Call Escalation, Call Location, Call Time, Patient Age and Nature of Injury.

Right of appeal

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

112. 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.

113. 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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Wycliffe House
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SK9 5AF