

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2021

Public Authority: Betsi Cadwaladr University Health Board
Address: Ysbyty Gwynedd
Penrhosgarnedd
Bangor
Gwynedd
LL57 2PW
(email: bcu.foi@wales.nhs.uk)

Decision (including any steps ordered)

1. The complainant requested information from Betsi Cadwaladr University Health Board relating to the end of life care of his late mother.
2. Betsi Cadwaladr University Health Board refused the request made under FOIA relying on the section 40(2) FOIA (Personal information) and section 41(1) FOIA (Information provided in confidence) exemptions.
3. The Commissioner decided that the Betsi Cadwaladr University Health Board had conducted appropriate searches to identify information falling within the scope of the request. He received assurances that all the relevant information held either had been disclosed or was exempt from disclosure.
4. Following his investigation, the Commissioner decided that the Betsi Cadwaladr University Health Board had correctly engaged the section 40(2) and 41(1) FOIA exemptions to refuse the FOIA request and had complied with its obligations under section 1(1) FOIA.

5. The Commissioner decided that, by not responding to the request for information within 20 working days, the Betsi Cadwaladr University Health Board had breached section 10(1) FOIA (Time for compliance).
6. The Commissioner did not require Betsi Cadwaladr University Health Board to take any steps to comply with the legislation.

Request and response

7. The information request related to correspondence that stemmed from the complainant's concerns about the end of life care of his late mother ("the deceased") who died in 2016. Since then there has been a considerable volume of correspondence between the parties. During that time other connected information requests have been made and service provision and quality matters have arisen. A related NHS Independent Review Panel (IRP) was held on 25 July 2019. There has also been involvement by, and correspondence with, the Public Service Ombudsman for Wales.
8. On 16 March 2021 the complainant wrote to Betsi Cadwaladr University Health Board (BCUHB) and requested information relating to the continuing health care (CHC) of the deceased in the following terms:

"Please provide all Correspondence as per the original FOI request and IC-[references redacted] for all correspondence between the two Health Boards re my and [patient name redacted] NHSCHC Review between Jan 2018 and Oct 2019. To include [three names redacted] at Powys and [two names redacted] and the NHSCHC Team at BCUHB.

The "original FOI request" was that investigated by ICO in case reference IC-[number redacted]. It was made to Powys Teaching Health Board (PTHB). on 31 July 2019 and was:

Provide us with all email and other communications between Powys staff and BCUHB staff regards myself, - [name redacted] ... and specifically the NHS CHC review process relating to [name redacted] case: ·

- *Between 1/4/18 and 25/10/18;*
- *Using the following keywords: [two names redacted], Com ***** , R/*** [references redacted]*
- *Between PTHB staff: [five names redacted], and BCHUB staff: [four names redacted],*

BCU.CHCRetrospectiveTeam@wales.nhs.uk [two names redacted]”.

9. BCUHB advised that it did not receive the 16 March 2021 request for information until the Information Commissioner forwarded it to them on 20 July 2021. During the Commissioner’s investigation, it transpired that the complainant had sent the request for information by email but BCUHB had refused to accept emails from him since 20 September 2019.

Scope of the case

10. The complainant contacted the Commissioner on 10 May 2021, to complain about the way his 16 March 2021 request for information had been handled, in the context of ongoing correspondence with the Commissioner about his complaints concerning BCUHB and some other public authorities.
11. The complainant did not follow advice and guidance from BCUHB (and also from the Commissioner) that FOIA was unlikely to provide him with the information he sought, but that alternative legislative routes were open to him and likely to be productive in ways that FOIA could not be. He successfully pursued these other, more appropriate routes but, in spite of that, still refused to accept that FOIA would be unlikely to assist him and persisted with his FOIA request.
12. The complainant had himself corresponded with BCUHB on these matters since the deceased’s final illness in 2016. Accordingly he is entitled to receive some of the information relating to himself, by making Subject Access Requests (SARs) under the Data Protection Act 2018 (DPA).
13. As the next of kin of the deceased, the complainant acquired additional information access entitlements to much of the information relating to the deceased’s end of life care through the provisions in the Access to Health Records Act 1990 (AHRA).
14. With regard to the FOIA request, BCUHB relied on the section 40 (Personal information) and section 41 (Information provided in confidence) FOIA exemptions to refuse the request. The Commissioner investigated the application by BCUHB of these FOIA exemptions.

Reasons for decision

Section 1 – General right of access to information

15. Section 1(1) FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

16. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner considers the complainant's evidence and arguments. He also considers the actions taken by a public authority to check that the requested information is not held and any explanations provided by the authority to explain why the information is not held.

17. The Commissioner is not required to prove beyond any doubt whether the information is, or is not, held. He is only required to decide whether, on the balance of probabilities, the information is held.

18. In determining whether information was held in this case, the Commissioner asked BCUHB questions to determine whether they had conducted appropriate and adequate searches to identify all relevant information.

19. The complainant told the Commissioner that he was concerned about:

" ... BCUHBs refusal to provide correspondence relating to My application for NHSCHC on my late mother and late father's behalf. An IRP which has been nullified by the [Public Service Ombudsman for Wales] because it did not follow due process and was organised in contravention of due process and then proceeded without key documents.

I think I have a right to this correspondence so I know what the Health Board said about me, in order for the Panel Chair to proceed in contravention of due process".

20. BCUHB did not receive the complainant's 16 March 2021 request for information until the Commissioner forwarded it to them on 20 July 2021. The reason for this was that, in 2019, BCUHB had blocked email access to their system by the complainant in response to what they regarded as excessive numbers of emails he had been sending to them.
21. An IRP was held on 25 July 2019, hosted by another public authority, which gave the complainant further information access entitlements outside of FOIA. Subsequently the papers relating to the 2019 IRP process were passed to BCUHB for retention. The complainant raised concerns about the IRP process and has made other information requests relating to it; his IRP concerns are not matters for the Information Commissioner but have been considered by the Public Service Ombudsman for Wales.
22. Despite the four month delay that had already occurred, BCUHB delayed their response to the 16 March 2021 request for information (after it was forwarded to them on 20 July 2021) well beyond the 20 working day limit. This was a breach of section 10(1) FOIA (Time for compliance).
23. On 7 September 2021 the Commissioner, relying on section 51 FOIA (Information notices), issued an Information Notice requiring BCUHB to respond to the Commissioner's investigation enquiries and to also provide the Commissioner with copies of the requested information, which they then did on 21 September 2021. BCUHB has since apologised to the complainant and the Commissioner for these delays.
24. On 26 October 2021, following further exchanges of correspondence BCUHB told the Commissioner:

"... I have responded to [the complainant - name redacted] via recorded delivery and attach a copy of my responses for your information, as previously requested. Please note that with regards to [SAR reference redacted], I have not included copies of the email searches we have provided to [the complainant] as part of his response, nor have I enclosed the documents which are referenced in the table supplied as part of our response Should you wish copies of all of these please let me know, however it is worth noting that the documents equate to in excess of 1,500 pages."
25. Also on 26 October 2021, BCUHB provided the complainant with a letter which accompanied their information disclosures. The BCUHB letter gave the complainant a full and detailed explanation of the

reasons why they no longer held some of the information he wanted to see, and were therefore unable to provide it. BCUHB added that they were providing new arrangements to partially mitigate the then current 'block' to his email access (which had prevented them from receiving his 16 March 2021 information request). BCUHB told the complainant:

"Please note that we have been unable to process your request under the Freedom of Information Act, as you have requested, as the information is personal about yourself or your late mother and would not fall within the remit of the FOI Act. We wrote to you separately on this matter under reference [reference redacted]."

We have therefore processed your request dated the 16th March 2021 under the Data Protection Legislation – Subject Access Request (SAR) and Access to Health Records Act 1990.

... [public authority - name redacted] were ... allocated to carry out the IRP for your late mother in July 2019. This is a reciprocal arrangement in these cases across all Health Boards in Wales.

The available paper records were sent by BCUHB to the IRP panel members. These paper records were duplicated for each panel member and yourself from the facilitator's CHC records and this was standard practice at the time. The panel would include the Chair, the out of Health Board (Independent) CHC nurse, a Local Authority (LA) representative and additionally yourself for the patient voice informed representation.

On further investigation I can confirm that we do not hold the original pack in the same format that it would have been made available to the panel in July 2019 due to the time that has lapsed. Also, due to the complex and continued ongoing situation, the file ... has evolved over time. Please be assured we are not deliberately withholding any information from you, however, without the original list we cannot establish what was in the original pack.

Since 2019, [there is] an electronic case management system Broad Care and [all] files [will shortly be] managed on this system. This ensures a full audit report and access of details report can be gained for each ... file. In addition, a quality cycle supporting data quality, consistent document filing conventions and processes are underway to support mitigation and recurrence of similar issues.

... in the spirit of being open and honest, ... you are already in receipt of these documents listed below, however under our duty to

advise and assist we will disclose these to you as you have requested. Please note that some, if not all, of these documents could have formed part of the original IRP [documentation] in July 2019”.

26. The Commissioner found this letter and the accompanying 1500 pages of information disclosures by BCUHB hard to reconcile with the complainant’s 28 October 2021 complaint to him, two days later, that:

“... I have not received a single one of the documents of correspondence requested!

I have not received ANY of the documents BCUHB sent to the [IRP]

I have not even received the Documents submitted or exchanged in preparation of the [IRP].”

27. In subsequent correspondence with the Commissioner, BCUHB confirmed that they had disclosed much of the information requested to the complainant in accordance with the DPA and AHRA. BCUHB confirmed that they did not hold papers for the 2019 IRP in electronic form; the surviving records of that IRP are only held in paper format.
28. In his further representations to the Commissioner, the complainant simply reiterated his belief that he had a right to the requested correspondence so that he knew what BCUHB had said about him. He offered no grounds to suggest that BCUHB had wrongly applied the section 40 and 41 FOIA exemptions.
29. In their representations to the Commissioner, BCUHB told the Commissioner that, in accordance with FOIA, they had issued a refusal notice to the complainant and were withholding some information from him relying on the section 40 and 41 FOIA exemptions.
30. The Commissioner accepted that the searches conducted by BCUHB would have been the most reasonable searches to identify relevant information. These searches used specific keywords and were, in the Commissioner’s view, appropriate keywords that should have returned relevant records.
31. The Commissioner was therefore satisfied that BCUHB had complied with its duty to locate relevant information under section 1(1)(a) FOIA.

Section 40 FOIA (Personal information)

32. The Commissioner has been provided with the withheld information in confidence and he is satisfied that much of it relates to the complainant himself or to the deceased or both. The remainder identifies relevant healthcare employees who were concerned with the care of the deceased or related matters with some references to other patients. As such, he is satisfied that disclosure would identify the data subjects so that it is their personal data.
33. The complainant offered no representations or grounds to support a view that the section 40 FOIA exemption had been applied wrongly.
34. In their representations, BCUHB said that data protection legislation defined personal data as data which related to a living individual who could be identified solely from that data, or from that data and other information in the possession of the complainant.
35. BCUHB said that, as FOIA responses are made to the public at large, they were unable to provide the complainant with the level of detail he was seeking due to the identification of individuals. This included the complainant's own personal details along with the personal details of his late mother, other patients and healthcare staff. BCUHB had therefore withheld the information relying on the Section 40(1) and (2) (Personal information) FOIA exemptions.
36. BCUHB added that, as some of the information related to the complainant, and was protected by the DPA, its disclosure would constitute unfair and unlawful processing and would be contrary to the principles set out in Article 5 of the General Data Protection Regulation (GDPR).

Section 40(1) – complaint's own personal information

37. Section 40(1) FOIA provides an exemption for information that is the personal data of the requester. Consideration of this exemption requires a single step; if the requested information constitutes the personal data of the requester, it is exempt.
38. Information originating from the complainant, and also information of which he is the subject, relate to him and he is immediately identifiable from that information. The Commissioner's conclusion therefore is that this information is the personal data of the complainant and so is exempt from disclosure under section 40(1) FOIA. Under the data protection legislation, BCUHB should consider this part of the request as being a SAR, which the Commissioner understands that they did.

Section 40(2) – third party personal information

39. Section 40(2) FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) FOIA is satisfied.
40. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the GDPR.
41. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then section 40 FOIA cannot apply.
42. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles.

Is the information personal data?

43. Section 3(2) DPA defines personal data as:
"any information relating to an identified or identifiable living individual"
44. The two main elements of personal data are that the information must relate to a living person and that person must be identifiable.
45. An identifiable living individual is 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.
46. 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.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

47. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection principles.
48. The most relevant data protection principle in this matter is principle (a). Article 5(1)(a) GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

49. In the case of a FOIA 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.
50. In order for disclosure to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
51. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires a GDPR Article 9 condition for processing.

Is any of the information special category data?

52. Information relating to special category data is given special status in the GDPR, Article 9 of which defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
53. Having considered the wording of the request, and viewed the withheld information, the Commissioner found that the requested information did include special category data. He reached this conclusion on the basis that the request is relating to medical processes carried out by and for other identifiable persons and he saw that the data subjects could be identified directly from it.
54. Special category data is particularly sensitive and therefore warrants special protection. It can only be processed, and processing includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.

55. The Commissioner considers that the only Article 9 conditions that could be relevant to a disclosure under FOIA are conditions (a) explicit consent from the data subject, or (e) data manifestly made public by the data subject.
56. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to a FOIA request or that they have deliberately made this data public.
57. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing the special category data would therefore breach principle (a) and so this information is exempt under section 40(2) FOIA.

Personal information which is not special category data

58. Not all of the withheld information is special category data as some relates to medical staff. The Commissioner must therefore also consider whether disclosure of this data is lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

59. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.
60. The Commissioner considers that the lawful basis most applicable 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".²

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

61. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the 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.
62. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

63. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that 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. These interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern, unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden.
64. The Commissioner noted that the complainant has a private interest in seeking the requested information to enable him to progress other matters. He also accepts that there is a legitimate interest in the public being assured that the BCUHB clinical services are of an appropriate standard, so that they can seek improvements where necessary.

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Is disclosure necessary?

65. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
66. The Commissioner has seen that there are mechanisms other than disclosure of third party personal data available to the complainant, such as an IRP, and to the general public through the services of bodies such as the Care Quality Commission. The NHS has mechanisms in place designed to achieve this. The complainant had one IRP in 2019 which he regarded as having been flawed and is seeking another through the auspices of the Public Service Ombudsman for Wales. Therefore a FOIA disclosure is not the only, or even necessarily the best, way to provide the public with appropriate assurance about the quality of BCUHB's clinical standards. The Commissioner therefore decided that a public disclosure to the world at large FOIA disclosure is not necessary to achieve the legitimate interest he has identified.
67. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a) and BCUHB were entitled to withhold the information under section 40(2) FOIA, by way of section 40(3A)(a) FOIA.

Section 41 – Information provided in confidence

68. Section 41(1) FOIA states that:
"Information is exempt information if –
 - a) it was obtained by the public authority from any other person (including another public authority), and*
 - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*
69. In representations to the Commissioner, BCUHB said they had also withheld information contained within the email threads and the documents held relating to the IRP under section 41(1) FOIA. BCUHB said their duty of confidence to patients applied even after

death, and the relevant information was therefore withheld relying on the Section 41(1) FOIA exemption. In reaching that decision BCUHB had taken into account the strong expectations of patients and families, and BCUHB's legal obligations to ensure that personal information relating to deceased patients, in this case including the complainant's own family member, was protected and remained confidential.

70. The complainant made no representations to the Commissioner in relation to the section 41 FOIA exemption.
71. In his analysis of the reliance on the section 41 FOIA exemption, the Commissioner has reviewed the withheld information and considered the application of the constituent parts of the exemption to it.

Was the information obtained from another person?

72. The requested information has been extracted from BCUHB healthcare records for living and deceased patients. The Commissioner considers that information contained within medical records is provided by the patient, whether it is information given to medical staff during consultations or other information recorded by health professionals concerning the medical care and treatment of patients. The Commissioner is therefore satisfied that the information was obtained from other persons.

Would disclosure constitute an actionable breach of confidence?

73. In considering whether or not disclosure of information constitutes an actionable breach of confidence the Commissioner considered:
 - whether the information has the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and
 - whether disclosure would be an unauthorised use of the information to the detriment of the confider.

Does the information have the necessary quality of confidence?

74. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
75. The withheld information comprises medical records and related correspondence. This information is not otherwise accessible to the

general public and is not trivial. The Commissioner was therefore satisfied that the requested information had the necessary quality of confidence.

Was the information imparted in circumstances importing an obligation of confidence?

76. An obligation of confidence may be explicit (for example, the terms of a contract) or implicit (for example, where information is provided in the context of the relationship between a patient and doctor). Disclosing healthcare record information without the explicit consent of the patient, or their personal representative in the case of a deceased person, would be a breach of confidence in respect of those patients.
77. Patients provide information about their health to the medical staff involved in their care and receive assurance that their information is being treated in strict confidence and in accordance with their GDPR Article 8 right to respect for their private and family life, home and correspondence. This is supported by the duty of confidentiality of health professionals to protect patient confidentiality.
78. The Commissioner was therefore satisfied that disclosure of the requested information would compromise the duty of confidentiality between health professionals and patients.

Would disclosure be of detriment to the confider?

79. Where information relates to a personal or private matter, the Commissioner (in accordance with current case law) considers that it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. A loss of privacy is itself detrimental. It is therefore not necessary for there to be any tangible loss to the original confiders for private healthcare information to be protected by the law of confidence.
80. The Commissioner considered BCUHB's duty of confidence to their patients and healthcare professionals. It is relevant that the duty of confidence continues to apply after the death of the person concerned. This position was confirmed by the Tribunal in *Pauline Bluck v Information Commissioner and Epsom & St Helier University Hospitals NHS Trust (EA/2006/0090)*. In the *Bluck* case the Tribunal found that, even though the person to whom the information related had died, action for breach of confidence could still be taken by the personal representative of that person.

81. It is not necessary for the Commissioner to consider who that personal representative should be. It is sufficient that the principle has been established in law that a duty of confidence can survive death and an actionable breach of confidence be initiated by a personal representative.
82. The Commissioner is satisfied on the facts of this matter that disclosure of the requested information under FOIA would be unauthorised, as he saw no evidence that the confiders had consented to this use.
83. The Commissioner also accepted that disclosure by BCUHB of information patients and personal representatives expected to be held in confidence would have a detrimental effect on BCUHB's reputation as being willing and able to protect patient information. He therefore accepted that this limb of the test for confidence was met.
84. Accordingly, the Commissioner was satisfied that the three tests for breach of confidence had been met and that disclosing the requested information would be a breach of confidence for which action could be taken by the confiders or their personal representatives.

Is there a public interest defence for disclosure?

85. The section 41 FOIA exemption is absolute and there is no requirement to apply a public interest test. However, disclosure of confidential information where there is an overriding public interest in disclosure is a defence to an action for breach of confidentiality. The Commissioner therefore considered whether BCUHB could reasonably rely on such a public interest defence to an action for breach of confidence in this case.
86. The Commissioner saw that the Courts have taken the view that significant public interest factors must be present in order to override the strong public interest in maintaining confidentiality.
87. Overriding the duties of privacy and confidentiality would cause the breakdown of the confidential healthcare professional/ patient relationship. This would result in some patients being reluctant to divulge sensitive information about themselves to their healthcare team, thereby adversely impacting the quality of their care.
88. In his correspondence with BCUHB, the complainant said that the information was needed to demonstrate what he regarded as bad clinical practice by healthcare professionals.

89. The Commissioner gave some weight to the need for openness and transparency and accepted that there is legitimate public interest in the public knowing whether or not BCUHB are diagnosing and treating patients appropriately. The Commissioner saw however that other mechanisms, including complaints procedures, already exist specifically to monitor the quality of NHS healthcare and that the complainant had already made some use of these.
90. Against disclosure, the Commissioner considered that there is a weighty public interest in maintaining the confidentiality of patient information so that patients are not deterred from seeking medical treatment for fear of having their medical histories made public.
91. On balance the Commissioner considered that the public interest in disclosing the withheld healthcare information was not so significant as to outweigh the strong public interest in maintaining the confidentiality of the consulting room for patients and healthcare professionals.
92. The Commissioner therefore found that the relevant requested information had been provided to BCUHB in confidence and that disclosure would be a breach of confidence actionable by the relevant confiders and personal representatives. He saw no public interest defence that BCUHB could rely on. He therefore decided that the relevant information had been correctly withheld relying on the section 41 FOIA exemption.

Sections 1 and 10 – general right of access and time for compliance

93. On 16 March 2021 the complainant requested the information. BCUHB had previously imposed an email block which meant that they did not receive the request until the Commissioner forwarded it to them on 20 July 2021. Even then BCUHB failed to respond until after the Commissioner had issued his Information Notice of 7 September 2021. The Commissioner decided that, by failing to respond to the complainant's request within 20 working days, BCUHB had breached section 10(1) (Time for compliance) FOIA.

Right of appeal

94. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

95. 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.
96. 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

Dr Roy Wernham
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