

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

Public Authority: Care Quality Commission
Address: 37 Wimpole Street
London
W1G 8DQ

Decision (including any steps ordered)

1. The complainant has requested the Care Quality Commission (CQC) to disclose the information it holds regarding its investigation and subsequent outcomes in respect of the protected disclosure information they supplied. The CQC refused to disclose the requested information citing section 31(1)(g) by virtue of 31(2)(c) of FOIA (law enforcement).
2. The Commissioner's decision is that the CQC is entitled to refuse to disclose the requested information in accordance with section 31(1)(g), by virtue of 31(2)(c) of FOIA. The CQC however breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 14 November 2021, the complainant wrote to the CQC and requested information in the following terms:

"Please send me the information, held, regarding the CQC's investigation and subsequent outcomes, in respect of the protected disclosure information, which I made to you and were allocated the following references by the CQC:

- i) ENQ 1 – 881737918
 - ii) ENQ 1 – 11275130120”
5. The CQC responded on 14 December 2021. It refused to disclose the requested information citing section 31(1)(g) by virtue of section 32(1)(c) and sections 40, 41 and 44 of FOIA.
 6. The CQC carried out an internal review on 27 January 2022. It upheld the application of the exemptions cited but considered at this point it should have used the necessary ‘neither confirm or deny holding the requested information’ subsections of each. It acknowledged it was late providing its internal review response.

Scope of the case

7. The complainant contacted the Commissioner on 5 February 2022 to complain about the way their request for information had been handled. They disputed the application of the exemptions cited and considered the requested information should be disclosed.
8. During the Commissioner’s investigation, the CQC confirmed that it no longer wished to rely on the ‘neither confirm or deny holding the requested information’ subsections of either exemption cited. It however considers all four exemptions that were originally stated in its response of 14 December 2021 still apply.
9. The Commissioner has not requested sight of the withheld information in this case. He considers he is able to reach his decision without it. He did however request further submissions. The Commissioner is satisfied that regulation 31(1)(g) by virtue of 31(2)(c) of FOIA applies to the entire request and the following section will now outline why.

Reasons for decision

10. The CQC has argued that disclosure of the requested information would be likely to prejudice its regulatory functions. The particular function it has specified is its function of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise.
11. As the regulator, the CQC’s role is to obtain and assess evidence as to the compliance with the Health and Social Care Act 2008 and associated regulations, to assess and report on the quality and safety of care

provided by registered providers, and to take actions where providers do not meet their legal obligations.

12. It stated that it last published a report on North East Ambulance Service (NEAS) in January 2019 following an inspection in September and October 2018. Its inspection programme was then affected by the Covid-19 pandemic.
13. The CQC confirmed that where it receives information of concern about a provider between inspections it will review that information alongside other intelligence that it holds, seek further information from the provider as necessary and make a decision on its regulatory response. That regulatory response may include conducting an inspection to gather further evidence and taking enforcement action under its statutory powers. It stated that its inspection reports are its statutory tool for informing the public as to the safety and quality of care.
14. At the time of the complainant's request the CQC had not conducted an investigation but instead gathered evidence and information to support its regulatory decision. It had considered the documents and information submitted by NEAS, it noted the ongoing actions to address the issues regarding coronial reporting and it had decided that immediate regulatory intervention (such as an inspection) was not required. However, the CQC's regulatory response to this matter will not be complete until the CQC conducts an inspection of NEAS, publishes its report and takes any further regulatory action considered appropriate at that time. It can therefore be said that the matters are still under review and the withheld information current and live.
15. The Commissioner agrees that disclosure would be likely to prejudice the exercise of the CQC's regulatory functions. It would be likely to discourage registered providers from sharing information.
16. Disclosure would be likely to discourage NEAS and other registered providers from disclosing confidential information relating to sensitive matters due to the fear of public disclosure. The CQC has powers to require registered providers to disclose information it requires to operate its regulatory functions, but it relies on registered providers being cooperative and proactive in sharing information with it. If the information was shared with the public it would discourage registered providers from being so willing to engage.
17. For the above reasons the Commissioner is satisfied that regulation 31(1)(g) by virtue of 31(2)(c) is engaged.
18. In terms of the public interest test, clearly the CQC and the complainant disagree on where the public interest balance lies.

19. The Commissioner recognises the public interest in transparency and accountability and in members of the public understanding more closely how the CQC carries out its regulatory functions. He accepts that there are clear public interest arguments in understanding how the concerns about NEAS have been considered to date and how the CQC reached the conclusion that no immediate regulatory action was required.
20. However, matters are still ongoing and the CQC has said that its regulatory response to this matter will not be complete until it conducts an inspection of NEAS, publishes its report and takes any further regulatory action considered appropriate. The requested information feeds into those ongoing matters. The Commissioner does not consider it is in the public interest to prejudice the CQC's ongoing regulatory considerations in respect of NEAS or wider. The CQC relies heavily on concerned individuals coming forward and in registered providers cooperating openly, candidly and voluntarily. If disclosure took place it would be likely to hinder these processes and therefore the CQC's ability to carry out its regulatory functions effectively and this is not in the wider interests of the public.
21. For the above reasons, the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.

Procedural matters

22. The CQC breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt. But it is noted that this was only by a single day.

Other matters

23. The CQC failed to carry out its internal review within 20 working days of receipt. The section 45 code of practice recommends all public authorities to carry out internal reviews within 20 workings days. A total of 40 working days is permitted but the additional time should only be required in particularly complex or voluminous cases. The Commissioner would like to remind the CQC of the requirements of the code and how important it is to complete internal reviews in a timely manner.

Right of appeal

24. 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

25. 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.
26. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF