

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2023

Public Authority: Carmarthenshire County Council

Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested disclosure of a safeguarding report by Carmarthenshire County Council (the council).
2. The council explained that no safeguarding report had been produced but instead disclosed a draft safeguarding response to the complainant containing redactions relying on section 40(2) of FOIA (personal data).
3. The Commissioner's decision is that the council should have relied on section 41 of FOIA (information provided in confidence) to withhold the information.
4. The Commissioner does not require any further action to be taken.

Request and response

5. On 31 January 2022, the complainant wrote to the council and requested information in the following terms:

"I would now like to make a further request to access the safeguarding report which was submitted by Cathy Richards to the Coroner's office this morning. I would be grateful if you could advise whether this falls within a subject access or FOI request."
6. On 17 May 2022, the council provided an internal review response which did not address the request for the safeguarding report.
7. Following the intervention of the ICO, on 24 May 2022 the council provided the following internal review response:

"A final Safeguarding Report was not in fact provided by Ms Richards to the Coroner's Office.

In response to a telephone call from the Coroner's Office, the Safeguarding Manager was asked for a summary of the Safeguarding team's involvement with your late brother's case. It was agreed, in the interests of expediency, that a draft communication to you (which had not been sent) and the content of an email actually sent to you 23rd December 2021 would be sufficient for this purpose. These were shared with the Coroner's Office and are both attached. Please note that the draft response has been redacted and content regarding a third party removed on the same basis as set out in my internal review (as below)."

Scope of the case

8. The complainant contacted the Commissioner on 13 May 2022 to complain about the way their request for information had been handled. At this time no internal review had been carried out. Following the intervention of the ICO the internal review responses of 17 and 24 May 2022 were provided, and the complaint was accepted for full investigation.
9. The Commissioner has seen the withheld information. From various other cases he has considered, he is satisfied that section 41 of FOIA applies. The following section will explain why.
10. The complainant is reminded that FOIA is applicant blind. When considering requests for information the relevant consideration is whether the requested information is suitable for public disclosure. It is not whether the applicant should have sight of the requested information but whether the world at large can.

Reasons for decision

Section 41 – Information provided in confidence

11. Information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
12. The withheld information is information about the individual concerned and the services used for the purposes of assisting the council's safeguarding function.

13. The Commissioner is satisfied that the withheld information is therefore information obtained from another person and this element of the exemption is met.
14. When determining whether disclosure would constitute an actionable breach of confidence it is necessary to consider whether the information has the necessary quality of confidence and whether it was imparted in circumstances importing an obligation of confidence. Then, whether disclosure would be an unauthorised use of the information to the detriment of the confider.
15. The Commissioner is satisfied that withheld information is information that has the necessary quality of confidence. It is not trivial or otherwise accessible to the general public.
16. The withheld information would have been imparted in circumstances giving rise to an obligation of confidence. The Commissioner is satisfied that there is an implicit obligation of confidence where information is provided in the context of the relationship between patient and doctor and other medical professionals. Information of this nature is treated with the strictest of confidence.
17. In terms of disclosure causing detriment to the confider, the Commissioner is satisfied that where the information relates to a personal or private matter, it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. He considers a loss of privacy is itself detrimental. It is therefore not necessary for there to be any tangible loss to the original confider for private healthcare information to be protected by the law of confidence.
18. It is also accepted that the duty of confidence continues to apply after the death of the person concerned. This is in accordance with the Information Tribunal hearing of *Pauline Bluck v Information Commissioner and Epsom & St Helier University Hospitals NHS Trust* (EA/2006/0090).
19. Although section 41 is an absolute exemption (and there is no requirement to consider the public interest test), it is accepted that if there is an overriding public interest in disclosure it can be a defence to an action of breach of confidentiality.
20. It is noted that the complainant may feel their own personal interests in the matter are sufficient, but the Commissioner does not consider this would be enough to constitute a public interest defence. There is weighty public interest in maintaining the confidentiality of this type of information and protecting the integrity of the patient/carer and medical

professional relationship. There are also other mechanisms available to monitor the quality of care provided – the complaints procedures and the Parliamentary Health Service Ombudsman.

21. For the above reasons, the Commissioner is satisfied that section 41 of FOIA applies.

Procedural matters

22. The Commissioner notes that the council missed the statutory deadline for its initial response (section 10 of FOIA requires a public authority to respond within 20 working days of receipt). This constitutes a breach of section 10 of FOIA.

Other matters

23. The Commissioner understands why the council dealt with the request in the way that it did as it was attempting to be as helpful as possible in a difficult situation. However, in these circumstances, the council should have explained clearly to the complainant that it could **either** deal with the request under FOIA (in which case the information would be entirely withheld but the complainant would have the right to appeal to the ICO) **or** it could deal with the request outside of FOIA, in which case, it would have been able to disclose some of the information to the complainant because disclosure would not have been to the world at large, but the complainant would have had no right of appeal to the ICO. Only once the complainant had decided on the applicable regime should the council have responded.
24. Further, the Commissioner notes that the council should have relied on section 41 of FOIA in respect of the safeguarding information rather than section 40(2) of FOIA.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea

Team Manager

Information Commissioner's Office

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Cheshire

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