

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2023

Public Authority: North Middlesex University Hospital Trust

Address: Sterling Way

London

N181QX

Decision (including any steps ordered)

1. The complainant requested information from North Middlesex University Hospital Trust (NMUH). The Commissioner's decision is that the NMUH is entitled to rely on section 40(2) of FOIA to withhold all of the requested information.
2. The Commissioner does not require the NMUH to take any steps.

Request and response

3. On 4 May 2022, the complainant made the following request for information to the NMUH:

"Can you please provide me with a list of all the staff who worked on the Acute Stroke Unit between 13th - 19th January 2021. I would like details of all Doctors, Nurses, Physio Therapists and Occupational Therapists. I am asking for names, but my understanding is that there should not be any data protection issues as some individuals names are already listed on the north mid website and I believe that there is also a board listing staff members on available on each ward."
4. The NMUH refused to provide all of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the NMUH was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because the request relates directly to information about identifiable living individuals, as defined under Section 3(2) of the DPA.
8. 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.
9. In the circumstances of this case, having considered the nature of the withheld information, the Commissioner is satisfied that the information relates to the data subjects. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
10. 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.
11. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

12. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
13. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
14. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
15. The Commissioner accepts that the complainant may have a legitimate interest in the information, but considers that this is a purely private concern, unrelated to any broader public interest. Therefore it is insufficient to outweigh the data subjects' fundamental rights and freedoms. They would have no expectation that their personal data would be disclosed to the world at large.
16. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The NMUH was therefore correct to apply section 40(2) of FOIA to this request.

Other Matters

17. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
18. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. By the date of this notice, the NMUH has not provided the complainant with the outcome of its internal review, 8 months after it was originally requested. The

Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.

Right of appeal

19. 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

20. 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.
21. 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
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Wycliffe House
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