

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2023

Public Authority: NHS England
Address: PO Box 16738
Redditch
B97 9PT

Decision (including any steps ordered)

1. The complainant has requested the public authority to disclose cancer statistics for the local authority area of Plymouth and the Plymouth Cancer Centre, broken down by the first half of a postcode. The public authority disclosed some information but refused to disclose the remainder citing section 22 and 40 of FOIA.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 22 and 40 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose all remaining withheld information to the complainant for the entire timeframe specified in the original request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The request was made to NHS Digital. NHS Digital has now merged with NHS England and NHS England has assumed responsibility for all activities previously undertaken by NHS Digital. For the purposes of this notice the Commissioner will refer to the 'public authority' when referring to both.

6. On, 8 April 2022, the complainant requested the public authority to provide the following information:

Dear NDRS team,

Can you please forward this information request to NCRAS.

Can you please provide(Data to include all cancers) :

1. The complete annual Cancer statistics for the local authority of Plymouth (all areas - postcode specific) From Jan 2014 to Jan 2022 [at a patient level -Annual individual level data to include actual numbers where 5 or below are recorded + aggregate statistics to include national rate/ population comparison] 7 and 8 Wellington Place Leeds West Yorkshire LS1 4AP www.digital.nhs.uk enquiries@nhsdigital.nhs.uk

2. Can you also please provide the complete annual Cancer statistics for the local authority of Plymouth's Hepatico-pancreatico-biliary Cancer Centre (all areas - postcode specific) From Jan 2014 to Jan 2022 [at a patient level - Annual individual level data to include actual numbers where 5 or below are recorded + aggregate statistics to include national rate/ population comparison]

("NCRA" is a reference to the National Cancer Registration and Analysis Service, which is one of two disease registers maintained by National Disease Registration Service (NDRS).)

7. The public authority responded 9 May 2022. It disclosed some information (the information for the local authority of Plymouth up to 2020) but withheld the remainder citing section 22 (all data for the local authority of Plymouth from 2020 onwards) and 40 of FOIA (the information for the Plymouth Cancer Centre).

8. There was continuing correspondence and the complainant's email of 21 June 2023 was treated as a request for an internal review.

9. The public authority carried out an internal review and notified the complainant of its findings on 26 July 2022. It upheld its application of section 22 and 40 of FOIA.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their request for information had been handled. He does not agree with the application of the exemptions cited and is unhappy that the public authority has not followed (or even consulted the Commissioner over) the Commissioner's established view that data broken down by the first part of a postcode cannot identify anyone and is therefore not personal data.
11. The Commissioner considers the scope of his investigation to establish whether or not the public authority is entitled to rely on section 22 and 40 of FOIA.

Reasons for decision

Section 40 - personal data

12. Section 40(2) of 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) is satisfied.
13. 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 UK General Data Protection Regulation ('UK GDPR').
14. 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'). If it is not personal data then section 40 of the FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:

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

"any information relating to an identified or identifiable living individual".

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. The public authority has said that disclosing the full postcode data alongside details of which patient was treated at a particular centre, could lead to individuals being identified. The assessment cannot take the postcode in isolation. It believes that the first half of the postcode, combined with treatment centre and cancer type, even if aggregated, generates small numbers including counts of 1. It confirmed that it is these small numbers of unique characteristics that are potentially re-identifiable. The public authority advised that in reality, the rarity of some of the tumour types in the general population makes this a genuine risk and not just hypothetical.
21. The public authority provided the Commissioner with a copy of the withheld information and highlighted that, given the low number of patients involved, it considers it is likely disclosure would result in individuals being identified.
22. The Commissioner questioned why the cancer centre data has been treated differently to the local authority data. The public authority explained that this was because local authorities have fixed denominator populations, whereas those treated at a particular cancer centre can reside anywhere in the country. It argued that this essentially means that the cancer centre is not restricted to local resident patients and will see rarer tumour types that are typically treated in tertiary referral cancer centres, often distant from the patient's home address. Again, it said, this increases the risk of reidentification, particularly when combined with other publicly available information.
23. It also referred the Commissioner to his own guidance and applying the "Motivated Intruder Test". It believes a determined person could use this data to identify individuals. The public authority confirmed that this information could be used together with other information in the public

domain, and/or information known to certain individuals in their personal/private capacities, and/or with future FOI disclosures. It is of the view that all of this could form part of a mosaic or jigsaw affect and result in an individual being identified.

24. The Commissioner's established view on data broken down by the first part of a postcode is that it is not possible to identify anyone from that, as the first half of a postcode covers multiple full postcodes and it would not be possible to identify an individual from that level of detail. The Commissioner drew the public authority's attention to this and asked it to explain why it feels a different approach is needed in this case.
25. As detailed above, it considers the small numbers, the rarity of the cancer type, coupled with information that may otherwise be available, could enable a motivated intruder to piece all this information together and identify an individual.
26. The Commissioner notes that there are entries of just one individual against a cancer type, the first half of the postcode and the year. However, it also notes that there are many entries where the number is much larger. The public authority has not addressed these entries and explained how it feels identification could occur. Equally, while it has said that there is a real risk of identification where the entry is only one, it has simply just made this assertion without providing further, more detailed evidence of how this could occur.
27. The Commissioner accepts that the cancer types are rare in the withheld information but he still remains unconvinced how that one individual could be identified from that and the first part of the postcode. The first part of the postcode will cover multiple individual postcodes and he fails to see how someone could successfully identify the relevant person in the geographical area the first half of the postcode covers.
28. Taking the second smallest postcode area in the UK as a hypothetical example, the HG postcode area is the only postcode area located entirely in North Yorkshire, there are five districts and in total there are 6317 postcodes. On average there are 1263 postcodes per district. Even if only one person with a particularly rare tumour type lived in an HG1 postcode, they could be living in any one of over 1,000 individual postcodes within the HG1 area.
29. The Commissioner considers it is possible that someone may know that a person had cancer in 2018, was treated at this centre but did not know the type of cancer and they wished to find out. The withheld information may allow them to see what the cancer was from this information, if the value recorded is only 1. But the Commissioner believes it is more likely that if that person knew the year and where

someone was treated, they would know the cancer too. If someone knew where a patient had received treatment – they are more than likely going to know what the treatment was for. It seems, to know this level of detail already, the patient or someone close to them will have shared that. If someone is willing to share where they are being treated and it is known that it is a centre that treats rare cancers, it seems more logical that they will have shared the type of cancer too.

30. Equally the Commissioner cannot see how someone would be able to tell which entry related to that individual, if there are occasions where there has been one occurrence in a postcode district for more than one of the type of cancers listed. You could have one individual in a postcode district with gallbladder cancer, for example, but then also one individual in that same postcode district with bile duct cancer. How would the motivated intruder identify which entry is the correct one?
31. The Commissioner is not convinced from the submissions received from the public authority that patients can be identified, even with the smallest of numbers or smaller postcode districts (if indeed these are referred to in the withheld information). It has failed to show how identification could occur or at least provide evidence to support the "Motivated Intruder Test" scenario. It is not appropriate to refer to this test but then provide no evidence of how it would apply or could be used successfully. For these reasons, the Commissioner has decided that the remaining withheld information does not fall within the definition of personal data and so the public authority is not entitled to rely on section 40 of FOIA.

Section 22 – information intended for future publication

32. This exemption allows a public authority to refuse to disclose information, which is intended for future publication. This exemption is subject to the public interest test.
33. Section 22 of FOIA has been applied to the data for the local authority area of Plymouth from 2020 onwards (it has not been applied to the centre data from 2020 onwards, as the public authority considers all data broken down by postcode is exempt under section 40).
34. The public authority confirmed that this information would be subjected to a "registration" process following which the data would be published on its website as part of its Cancer Registration Statistics.
35. It stated that it previously published Cancer Registration Statistics for 2019 (published around October 2021), available here:

[Cancer Registration Statistics, England 2019 - NDRS \(digital.nhs.uk\)](https://digital.nhs.uk/cancer-registration-statistics-england-2019)

36. Since issuing the internal review outcome, it has published Cancer Registration Statistics for 2020 (published around October 2022) available here:

[Cancer Registration Statistics, England 2020 - NDRS \(digital.nhs.uk\)](https://digital.nhs.uk/cancer-registration-statistics-england-2020)

37. It said that it is yet to finalise the date from 2021 onwards, so these have not yet been published. It considers this is adequate proof that it had a settled intention at the time of the request to publish this information and it says it will do so once it is finalised.
38. Having followed these links, the Commissioner questioned the public authority further and asked it to direct him to where the requested information for the local authority area of Plymouth, broken down by the first half of the postcode can be found.
39. The public authority responded and confirmed that when it originally responded to this request, section 22 was specifically applied in respect of the future updates to the local authority level data. This can be accessed here:
- [Local Health - Office for Health Improvement and Disparities - Indicators: maps, data and charts](#)
40. It stated that the links provided (in paragraph 33 and 34) do not break down the data further by postcode within the local authority. However, it referred the Commissioner to part of the original request where the complainant requested "the complete annual Cancer statistics for the local authority of Plymouth (all areas – postcode specific)", so the section 22 exemption was being cited for the "all areas" component as this was how the relevant team had interpreted the request.
41. For section 22 of FOIA apply, the public authority needs to demonstrate that it had a settled intention to publish the requested information at the time of the request. The complainant required the data broken down by the first half of the postcode for the local authority area of Plymouth and the Commissioner notes that there was various emails from the complainant throughout the process making this entirely clear.
42. The public authority has now confirmed that the published information does not break down the statistics by postcode within a local authority. It therefore does not and will not be publishing the requested information. For this reason the Commissioner has decided that section 22 of FOIA is not engaged.

Right of appeal

43. 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

44. 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.
45. 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
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