

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2023

Public Authority: NHS Digital
Address: 7 and 8 Wellington Place
Leeds
West Yorkshire
LS1 4AP

Decision (including any steps ordered)

1. The complainant has made a "meta request" for correspondence showing how a previous request was dealt with. The above public authority ("the public authority") provided some information and relied on sections 40(1) and 40(2) of FOIA (personal data of the requester and personal data of third parties respectively) to withhold information.
2. The Commissioner's decision is that the public authority has correctly relied upon sections 40(1) and 40(2) of FOIA in respect of element [1]. In respect of both elements, it has provided the information that fell within the scope of the request.
3. The Commissioner does not require further steps to be taken.

Background

4. Following the abolition of the former Public Health England (PHE), its functions were divided up between a number of successor bodies, including the UK Health Security Agency (UKHSA) and the public authority.
5. On 6 April 2022, the complainant made a request to the public authority relating to cancer statistics – responsibility for which now lies with the public authority, but was previously the responsibility of PHE.

6. A member of the public authority's staff, apparently following out of date guidance, forwarded the email on to an old PHE mailbox in the mistaken belief that that was the correct team to deal with requests for such information (it would appear that a similar request had been made prior to the reorganisation of functions so the member of staff may have simply been following the same process). However, that mailbox is now the responsibility of UKHSA, meaning that the request had been transferred to another public authority without the complainant's knowledge or consent.

Request and response

7. On 26 June 2022, the complainant wrote to the public authority and, responding to a previous piece of correspondence he had received from the public authority, requested information in the following terms (the emboldened text is the complainant's words, the non-emboldened text is quoted from the public authority's previous response):

"[1] Our enquiries have confirmed that internal guidance was followed that was unfortunately out of date. **Please substantiate this by providing the evidence to which you refer i.e. The actual forwarding emails to the information rights team...**

"[2] Action taken following concerns being raised is that internal guidance has been updated to include the correct email address in which to internally forward FOIs. These steps have been taken in order to avoid an error of this type happening again in the future. **Please provide the full internal guidance update to which you refer as this will contain the time date and issue ref."**

8. The public authority responded on 11 July 2022. It provided the correspondence within the scope of element [1], but relied on sections 40(1) and 40(2) of FOIA to redact email addresses and the names of staff. It provided information within the scope of element [2]. It upheld this position following an internal review.

Reasons for decision

Element [1]

9. Section 40(1) of FOIA allows a public authority to withhold information that is the personal data of the person requesting it. This is because such information can be accessed via a Subject Access Request (SAR).

10. It is self-evident from the request that at least some of the information falling within the scope of element [1] would be the complainant's own personal data as it related to an earlier request the complainant had made and how that request had been handled.
11. Section 40(2) of FOIA allows a public authority to withhold information if the information is the personal data of one or more third parties and if there is no lawful basis under data protection law allowing for disclosure.
12. The information in question is the names and email addresses of the sender and recipients of the referral email chain. This is self-evidently information which identifies the individuals concerned.
13. There is no evidence that the individuals have consented to their personal data being disclosed. Therefore disclosure can only take place if it is necessary to meet a legitimate interest.
14. The Commissioner recognises that the complainant has concerns about the way the public authority handled his own personal data (ie. the transferred request). That interest has already been satisfied by the disclosure of a redacted version of the emails and by the public authority providing an explanation as to why the request was transferred. Where email addresses have been redacted, the domain name has been left in, so it is clear which organisation is communicating with which. Adding in the names of the individuals concerned would be of no additional benefit in understanding why the situation came about.
15. To the extent that the complainant has a legitimate interest in knowing whether the public authority's most senior managers were aware, disclosing the withheld information would again, not serve this interest. The public authority would normally disclose the names of senior staff and has confirmed that the staff involved here are junior. Therefore the complainant has already had confirmation of the (non-) involvement of senior staff in the transfer of his request.
16. The Commissioner sees no broader legitimate interest in disclosure of the names. The complainant is pursuing a private interest which (whilst legitimate) is unlikely to be of interest to the wider world.
17. The Commissioner is therefore satisfied that there is no legitimate interest in disclosure under FOIA and hence section 40(2) of FOIA applies.
18. The complainant argued in his internal review that his request extended to correspondence subsequent to his request being transferred. It does not.

19. The complainant made clear in his correspondence that he was after the emails transferring his request to UKHSA "ie. the actual forwarding emails to the information rights team." There may well have been subsequent correspondence – but it does not fall within the scope of his request.
20. The Commissioner is therefore satisfied that the public authority has provided the information falling within the scope of this element of the request.

Element [2]

21. The public authority has provided a copy of the section of internal guidance that refers to the allocation of requests. It explained that all teams had been working to this guidance since 5 May 2022. It also provided the text of a comment that had been added to the document on 4 May 2022 which relates to the handling of requests such as the transferred request.
22. FOIA creates a right of access to **information**. It does not provide a right of access to **documents**. Whilst it will usually be easier for the public authority to simply provide a copy of the document containing the information, there may be occasions where this is unsuitable (such as where the relevant information is only a small part of a large document – especially where the remaining information may be exempt).
23. In this case, the public authority has explained that the guidance document as a whole was still being updated (and covered multiple processes beyond dealing with FOI requests), but that the particular section regarding FOI requests had been updated and could therefore be disclosed.
24. The Commissioner is satisfied that the request, read objectively, referred to the "full update" of the public authority's internal guidance as it related to the handling of his previous request, not the full guidance. It was therefore legitimate for the public authority to have provided the information that it did.
25. Whether or not the complainant considers the update made by the public authority to be adequate for the purpose is a matter for him. The Commissioner is satisfied that the public authority has provided the information that it holds in recorded form.

Other matters

26. Although section 40(1) is the correct means of dealing with a FOIA request for information which is the personal data of the requester, rather than cite this exemption to withhold information, the Commissioner would normally expect a public authority to instead consider the request as a SAR first. This is because SAR provides a greater right of access to an individual's own personal data.
27. It is the public authority's responsibility to determine the most appropriate regime(s) for responding to a request, irrespective of what the requester may have asked for.
28. Whilst he cannot compel the public authority to do so in a decision notice under FOIA (and it may not result in the additional disclosure of information), the Commissioner would recommend that the public authority also consider the above request as a SAR.

Right of appeal

29. 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

30. 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.
31. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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