

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 July 2023

**Public Authority:** NHS Bristol, North Somerset and South Gloucestershire Integrated Care Board

**Address:** 360 Bristol – Three Six Zero  
Marlborough Street  
Bristol  
BS1 3NX

#### **Decision (including any steps ordered)**

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1. The complainant has requested the names of specific members of staff. The NHS Bristol, North Somerset and South Gloucestershire Integrated Care Board "the public authority" refused to provide the requested information, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that to disclose the requested information would breach the data protection principles and therefore it should be withheld under section 40(2).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 13 January 2023 the complainant wrote to the public authority and requested:  
  
"RE: Email from you of 7/10/2022. Quote "The Customer Services team explained that the questions asked below had already been received by them"... "They advised us that they would send one response to you directly from their team". [as in the email trail below]

- What is the name of staff member of the C/Service team who stated this to you?
  - What is the name of the anon. FOI staff member who relayed this [that I quote] to me under the banner of, 'Freedom of Information Team'?"
5. The public authority responded on 9 February 2023. It withheld the requested information under section 40(2).
  6. Following an internal review the public authority wrote to the complainant on 13 March 2023. It upheld its previous position.

## **Reasons for decision**

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### **Section 40(2) – personal information**

7. Section 40(2) of FOIA states:
  - “Any information to which a request for information relates is also exempt information if-
  - (a) It constitutes personal data which does not fall within subsection (1), and
  - (b) The first, second or third condition below is satisfied.”
8. In this instance the relevant condition is contained in section 40(3A)(a) which states:
  - “The first condition is that the disclosure of the information to a member of the public otherwise than under this Act-
  - (a) Would contravene any of the data protection principles.”
9. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.
10. Secondly, he must establish whether disclosure of that information would breach any of the data protection principles.

### **Is the requested information personal data?**

11. Part 1, Section 3(2) of the DPA18<sup>1</sup> defines personal data as:

“any information relating to an identified or identifiable living individual.”

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.

13. The withheld information in this case is the names of two members of staff at the public authority. A person’s name clearly relates to them and they are also identifiable from that information; therefore a name is personal data.

14. The fact that information constitutes personal data doesn’t automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.

15. The most relevant data protection principle in this case is principle (a) which states that “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”<sup>2</sup>

### **Would disclosure contravene principle (a)?**

16. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.

17. In order to be lawful, one of the lawful bases listed in Article 6(1)<sup>3</sup> of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

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<sup>1</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section/3)

<sup>2</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://www.legislation.gov.uk/eur-2016/679/consolidated/20160427/1/1)

<sup>3</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://www.legislation.gov.uk/eur-2016/679/consolidated/20160427/1/1)

## **Lawful processing: Article 6(1)(f) of the UK GDPR**

18. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."
19. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the FOIA, it is necessary to consider the following three-part test:
20. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;  
  
**ii) Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;  
  
**iii) Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interest test**

21. In its refusal notice, the public authority explained 'The ICB believes that the interest in the names of the staff members is only of interest to the requester. Therefore, there is no legitimate interest in disclosing the information.'
22. The Commissioner disagrees. In considering any legitimate interest(s) in disclosing the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA, or may represent the private concerns of the requestor.
23. It is important to remember that disclosure under FOIA is disclosure to the world at large. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
24. In this case it is clear that the complainant is seeking access to the withheld information for a specific reason: they are pursuing a complaint against specific members of staff at the public authority. The

Commissioner understands this is part of a wider service complaint that the complainant has made to the public authority. It's not the Commissioner's role to comment on that service complaint.

25. With the above in mind, the Commissioner is satisfied that there is a legitimate interest in disclosing this information.

### **Necessity test**

26. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
27. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
28. In its refusal notice, the public authority acknowledged 'As the question asks for the names of staff who sent specific emails, disclosure of the personal information would be the only way to answer the question.'
29. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public. Therefore, there are no less intrusive means of achieving the legitimate aims identified in stage (i).

### **Balancing test**

30. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject. In this case the data subjects are specific members of staff at the public authority – one from information access and one from customer services.
31. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
32. In performing this balancing test, the Commissioner has considered the following
- the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;

- whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
33. In the Commissioner's view, the balancing test should take into account whether the data subjects concerned have a reasonable expectation that their information would not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
34. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual which, in this case, the public authority has said it will.
35. As part of the evidence available to the Commissioner on this case, he can see that the CEO of the public authority previously declined to release the name of a member of staff to the complainant, inferring that the complainant would be a threat to the member of staff in question. Again, it's not the Commissioner's role to comment on any service complaint the complainant has with the public authority.
36. The complainant's concern is that correspondence, from the FOI and customer service teams at the public authority, are signed off by the team and not an individual. Again, it's not the Commissioner's role to comment on this – though he acknowledges that both customer service and information access roles are public facing.
37. The public authority has explained 'As outlined in [previous FOI request] the FOI team uses a generic signature for emails as members of the team have previously been subjected to personal abuse by email. Therefore, there is an expectation by the FOI team member that their name would not be released.'
38. The public authority has also confirmed that both data subjects have objected to the disclosure of their personal data in response to the request.
39. The Commissioner must consider whether a public facing member of staff would reasonably expect that their personal data will always be withheld. If there have been previous instances of targeted abuse to specific staff, this will obviously affect the expectations of the staff who work in these teams.

40. The public authority has also explained, 'Although the names in association with the email are not in the public domain, the ICB recognises that in a previous FOI response (previous FOI request) the ICB has disclosed the names of the ICB FOI team, and the Customer Services team disclose their names to enquirers as standard practice. Therefore, the names of staff are already in the public domain. Staff names and job titles are also available to all members of the public as part of the ICB declarations of interest register which can be found on the ICB website<sup>4</sup>.'
41. Ultimately, each case must be considered on a case by case basis and, in this instance, the Commissioner has decided that disclosing the requested information doesn't make the public authority any more transparent – it's already published the names of all public facing staff within the customer service and information access teams. Whilst the Commissioner acknowledges there is a legitimate interest in this information, it's a private concern of the requestor and therefore doesn't outweigh the fundamental rights and freedoms of the individuals who specifically objected to the disclosure of their personal data.
42. It's important to remember that this objection is likely to be connected to the legitimate interest that's being pursued here. The Commissioner notes that the complainant's ability to pursue their service complaint isn't hindered by not having the requested information. –It can still be investigated in a way that doesn't disclose to the world at large personal data that the data subjects have specifically objected to.

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<sup>4</sup> [Register of Interests - NHS BNSSG ICB](#)

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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