

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 May 2024

Public Authority: Epsom and St Helier University Hospitals Trust
Address: St Helier Hospital
Wrythe Lane
Carshalton
Surrey
SM5 1AA

Decision (including any steps ordered)

1. In a five-part request, the complainant has requested information about reported incidents of violence and aggression. Epsom and St Helier University Hospitals Trust ('the Trust') has withheld all the information under sections 38 and 40 of FOIA. These exemptions concern health and safety and personal data, respectively.
2. The Commissioner's decision is that the information requested in parts 1 and 2 of the request is exempt from disclosure under section 40(2) of FOIA because it's other individuals' personal data. However, parts 3, 4 and 5 of the request don't engage either section 38 or 40(2).
3. The Trust breached section 17(3) of FOIA as, in respect of section 38, it didn't provide the complainant with an outcome of its public interest deliberations within a reasonable period.
4. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - Disclose the information requested in parts 3, 4 and 5 of the request.
5. The Trust must take this step within 30 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

6. On 22 September 2023, the complainant wrote to the Trust and requested information in the following terms:

“Q1. Number of incidents (according to Management of Violence & Aggression Policy) reported, by quarter, by department from the date [redacted] assumed the role of [redacted] for the Emergency Department till now.

Q2. Number of incidents (according to Management of Violence & Aggression Policy) reported, by quarter, by department for one year prior [redacted] assumed the role of [redacted] for the Emergency Department.

Q3. How many of these incidents (per quarter) have resulted by “supposed” culprits taking legal action against your Hospital for the same time period as requests number 1 and 2.

Q4. How many of these incidents (per quarter) have resulted by “supposed” culprits reporting your hospital to the Ombudsman for the same time period as requests number 1 and 2.

Q5. The number of reports by the hospital staff to the NMC, GMC, HSE or other relevant regulatory body, by department, by quarter, due to the incidents as per the Management of Violence & Aggression Policy for the same period as requests number 1 and 2.”

7. The Trust responded on 8 November 2023. It applied section 38 to the entire request but didn't provide any public interest arguments. The complainant requested an internal review on 10 November 2023. The Trust didn't provide a review within the recommended timescale and the Commissioner accepted the complaint for further consideration without a review having been carried out.
8. As a result of the complaint to the Commissioner, the Trust provided an internal review on 5 February 2024. The Trust maintained its reliance on section 38 and provided public interest arguments at this point. The Trust advised it had also applied section 40 to the request.

Reasons for decision

9. This reasoning will focus first on the Trust's application of section 40(2) to the complainant's request. If necessary, it will also consider the Trust's application of section 38 to the request.

Section 40 – personal data

10. Section 40(2) of FOIA says that information is exempt information if it's the personal data of another individual and disclosure would contravene one of the data protection principles. The most relevant principle is under Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR). This states that

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

11. In this case, the complainant has requested information about incidents of violence and aggression.
12. The Commissioner is satisfied, first, that the information requested in part 1 and part 2 is personal data.
13. Part 1 is the personal data of the individual named in the request. They can be identified from the information requested in this part because they're named in the request - and the information therefore relates to them. It would show how many incidents of violence and aggression had been reported since they took up their role.
14. The Commissioner also considers that the information requested in part 2 can be categorised as the personal data of the individual, or individuals, formerly in the role referenced in the request. Against the backdrop of the NHS department in question, a person sufficiently motivated would be able to find out who was formerly in that role. Some staff members currently working in the department or elsewhere in the NHS would also be likely to be aware who that person(s) was. Disclosing the information would show how many incidents of violence and aggression had been reported in the year in question, when that other individual or individuals were in the role.
15. However, the Commissioner considers that, without the information requested in part 1 and part 2, the information requested in parts 3, 4 and 5 can't be categorised as anyone's personal data. It wouldn't be possible to identify anyone from that information and the information wouldn't relate to anyone.

16. The Commissioner therefore finds that the information requested in parts 3, 4 and 5 of the request isn't personal data and therefore these parts don't engage section 40(2).
17. However, parts 1 and 2 of the request can be categorised as personal data and he'll go on to consider whether disclosing this personal data would be lawful. This involves considering three 'tests': the legitimate interest test, the necessity test, and the balancing test.
18. Regarding legitimate interest, the complainant has an interest in the individual named in the request and in incidents of violence and aggression and that's a legitimate interest for them to have. There's also a legitimate interest in a public authority such as the Trust demonstrating it's open and transparent. Regarding necessity, to address these interests, it would be necessary to disclose the personal data of the data subjects; that is, the person named in the request and the person (or persons) formerly in the role.
19. Finally, the balancing test. The information concerns the individuals caught by the request in their professional rather than private capacity. However, the Commissioner considers that they would still reasonably expect that their personal data wouldn't be disclosed to the world at large under FOIA. As discussed, disclosing this information would allow others to draw – potentially incorrect - conclusions about the named individual's effect on the number of incidents of violence and aggression in their workplace, and about the individual(s) formerly in the role. Disclosure would, in the circumstances of this case, therefore cause those individuals harm or distress.
20. It appears to the Commissioner that the complainant is pursuing a purely private concern unrelated to any broader public interest – because there's little broader public interest in the information they've requested. Unrestricted disclosure of the individuals' personal data to the general public is therefore not proportionate.
21. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information requested in part 1 and part 2 of the request would be unlawful as it would contravene the data protection principle set out under Article 5(1)(a) of the UK GDPR.
22. Because the Commissioner has found that parts 3, 4 and 5 don't engage section 40, he'll now consider the Trust's application of section 38 to those parts.

Section 38 – health and safety

23. Under section 38(1) of FOIA, information is exempt information if its disclosure would, or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.
24. Like parts 1 and 2, parts 3, 4 and 5 of the request are for numbers, but it isn't possible to derive any conclusion about the person named in the request, or anyone else, from those numbers. Taking part 3 and the number of incidents of violence that resulted in legal action. If, for the period since the named individual took up their role the number of incidents resulting in legal action was, for example, 1, and for the year before they took up their role it was, for example, 2 – without the total number of incidents for the period since the individual took up their role and for the year previously (parts 1 and 2 of the request) - it wouldn't be possible to draw any conclusions about the named individual, or anybody else - from that information. The same is true of parts 4 and 5.
25. The Commissioner isn't therefore persuaded that disclosing the information requested in parts 3, 4 and 5 of the request would endanger any other individuals' health and safety. He finds that those parts don't therefore engage section 38.

Procedural matters

26. The Commissioner finds that the Trust failed to comply with section 17(3) in this case because, in respect of section 38(1), it failed to provide the complainant with the outcome of its public interest consideration within a reasonable time.

Other matters

27. Providing an internal review isn't a requirement of FOIA but is a matter of good practice. The Commissioner recommends that a public authority provides an internal review within 20 working days in most cases. For monitoring purposes, the Commissioner has noted that the Trust didn't provide a review within the recommended timescale in this case.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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