

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 September 2006

Public Authority: NHS Litigation Authority
Address: Napier House
24 High Holburn
London
WC1V 6AZ

Summary

The complainant made a request for the name and address of the public authority staff member who had made a specific decision in the processing of her case with them. The public authority refused this information citing the exemption provided at section 40 of the Act for personal data. The Commissioner's decision is to uphold the public authority's application of section 40 to withhold the information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant made a request on 9 April 2005 for "the name and address of the person responsible for giving the instructions in relation to the issue of costs after I lost my claim for medical negligence on 9 February 2005."
3. The request was originally made to Shropshire and Staffordshire Strategic Health Authority and was transferred to the NHS Litigation Authority on 18 April 2005.
4. The public authority issued a refusal notice on 15 May 2005. It refused to release the requested information citing the exemption provided at section 40 of the Act for personal data.

5. The complainant requested a review of the decision from the public authority and the result of this was sent to her in a letter dated 25 May 2005. The internal review upheld the public authority's original decision.

The Investigation

Scope of the case

6. On 29 July 2005 the complainant contacted the Information Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the refusal of the public authority to release the requested information.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. The Information Commissioner contacted the public authority on 27 July 2006 and asked for information about the public authority's policy on withholding staff names, and the reasoning for the application of the section 40 exemption in this particular case.
9. The public authority replied to the Information Commissioner on 21 August 2006 providing the information that had been requested. It also stated that the exemption provided at section 36 (2) (2) might apply as an alternative to the section 40 exemption, as in the reasonable view of a "qualified person", in this case the Chief Executive of the NHSLA, releasing the requested information would be likely to prejudice the effective conduct of public affairs. It also clarified that it took the view the complainant was asking for the home address of the person who was the subject of the request since the complainant already had the contact details for the NHSLA offices.

Analysis

10. The Commissioner has considered the public authority's response to the complainant's request for information.
11. Although the public authority applied more than one exemption to the requested information, as the Commissioner found that the section 40 exemption had been correctly applied he did not consider the application of the section 36 exemption.

Exemption

Section 40

12. Section 40 (2) of the Act provides that information is exempt from release where it is personal data about a third party and where releasing it would breach any of the principles set out in the Data Protection Act 1998.
13. The Commissioner is satisfied that the requested information constitutes personal information about a third party in that it is information about a living individual from which that individual could be identified.
14. The public authority argued that releasing the requested information would breach principle 1 of the Data Protection Act 1998 in that it would be unfair to the data subject. Principle 1 of the Data Protection Act provides that information should be processed fairly and lawfully.
15. The public authority argued that releasing the information would be unfair to the data subject because it would expose the individual to a risk of harassment. In support of this argument it stated that the nature of its work, dealing with allegations of clinical negligence, meant that its relationships with claimants were by definition contentious and often also highly emotive. It argued that this meant that a real risk of staff harassment existed and it provided examples of actual staff harassment that had occurred in the past. The public authority also advised the Commissioner that whilst it would normally release names of points of contact when processing a case, it followed a general policy of not releasing the names of junior members of staff responsible for making specific decisions. Its policy instead would be to advise complainants that its Chief Executive took responsibility for all decisions made.
16. The Information Commissioner considers that in circumstances where there is no detriment to the individual staff member it would not breach data protection principles to release the names of staff undertaking certain professional duties, and that to do so would promote the accountability of public authorities for the decisions they make. He also considers that the existence of a general policy of withholding names is not sufficient reason in itself to deem processing as unfair although it should be taken into account as a factor that might affect the reasonable expectations of a data subject on how their personal information is processed. However he is satisfied in this case that based on the previous experiences of this particular public authority, releasing the requested information would be unfair to the data subject because it would expose them to a risk of harassment. This would be unfair processing in breach of principle 1 of the Data Protection Act 1998. The Information Commissioner considers that in all circumstances releasing the home address of the individual staff member would be unfair processing in breach of Principle 1 of the Data Protection Act 1998. The Commissioner's decision therefore is to uphold the public authority's application of the section 40 exemption.

The Decision

17. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it correctly applied the exemption provided at section 40(2).

Steps Required

18. The Commissioner requires no steps to be taken.

Right of Appeal

19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of September 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Relevant Extracts from the Freedom of Information Act 2000:-

Section 40 – Personal Information

40. - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
"data subject" has the same meaning as in section 1(1) of that Act;
"personal data" has the same meaning as in section 1(1) of that Act.