

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 23 November 2011

Public Authority: Mersey Care NHS Trust
Address: Trust HQ
8 Princes Parade
Princes Dock
St. Nicholas Place
Liverpool
L3 1DL

Decision (including any steps ordered)

1. The complainant has requested a copy of compromise agreements entered into with doctors of any grade over the last 10 years. He also requested a list of exploratory issues covered by the compromise agreements (ie the reasons why the compromise agreements were entered into).
2. The Information Commissioner's (the Commissioner's) decision is that Mersey Care NHS Trust (the Trust) does not have a duty in this case to comply with section 1(1)(a) of the FOIA on the basis of the exemption contained within section 40(5)(b)(i).

Request and response

3. On 15 September 2011 the complainant wrote to the Trust and requested information in the following terms:

'Please provide copies of all compromise agreements you have entered into with doctors of any grade. Please also provide a list of exploratory or illustratory issues covered by the compromise agreements (ie. the reasons why the compromise agreements were entered into.)'

This request was to cover the previous 10 years.

4. The Trust responded on 10 October 2011. It refused to confirm or deny whether or not it held the requested information under section 17(4) of the FOIA.

5. On 11 October 2011 the complainant asked the Commissioner to proceed to a decision notice with respect to this response. The Commissioner informed the Trust that he did not consider the above to be a valid response and asked it to specify under section 17(1)(b) which exemption had been applied.
6. On 26 October 2011 the Trust refused to confirm or deny whether or not it held the requested information under section 40(5) of the FOIA.

Scope of the case

7. The complainant does not accept that the Trust is correct to apply section 40(5) to this request.
8. The Commissioner considers that the scope of this case is concerned with the application of 40(5)(b)(i) of the FOIA to this information request.

Reasons for decision

9. In relation to a request regarding the personal data of a third party, section 40(5)(b)(i) excludes a public authority from complying with the duty to confirm or deny whether it holds the requested information if complying with that duty would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 (the 'DPA') or would do so if the exemptions in section 33A(1) of that Act were disregarded.
10. Personal data as defined under section 1(1) of the DPA is data which relates to a living individual who can be identified from that data or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
11. In this case the Commissioner considers that a compromise agreement is the personal data of the employee to whom the agreement relates.
12. It is important to point out that the FOIA is applicant blind, except in very limited circumstances, none of which are applicable in this case. This means that a disclosure made under the FOIA is in effect a disclosure to the world at large, as any other applicant would be entitled to that same information upon request.

13. The Commissioner must therefore decide whether or not the Trust is excluded from the duty to confirm or deny that it holds the requested information (the duty imposed by section 1(1)(a) of the FOIA).
14. In line with the provisions of section 40(5)(b)(i), the Commissioner has first considered whether or not confirming or denying it holds the requested information would contravene any of the data protection principles.

Would complying with section 1(1)(a) contravene the first data protection principle?

15. The first data protection principle states in part; 'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met....'
16. In considering whether or not confirming or denying whether the requested information was held would be fair, the Commissioner took into account the reasonable expectations of any relevant data subjects, whether it would cause damage and distress to any of the relevant data subjects and the legitimate interests of the public at large.
17. Without disclosing any more detail than is necessary in order not to defeat the intention of section 40(5), upon considering the Trust's submissions, the Commissioner is satisfied that in the context and background of this request, any relevant data subjects would have had a reasonable expectation of privacy and would not expect the Trust to confirm or deny if this information is held. The Commissioner has detailed the Trust's submissions in the confidential annex attached to this Notice.
18. Furthermore, again after considering the Trust's submissions, the Commissioner considers that confirming or denying whether the requested information is held may cause damage or distress to any relevant data subjects. The Commissioner has detailed the Trust's submissions in the confidential annex attached to this Notice.
19. The Commissioner does consider that the public has a legitimate interest in knowing whether the Trust has entered into any compromise agreements as there is a public interest in knowing how public money is being spent.
20. However the Commissioner considers that under all the circumstances of this case, confirming or denying whether the requested information is held would breach the first data protection principle. The Commissioner is therefore satisfied that any response provided in this regard in line with the provisions of section 1(1)(a) of the Act would not be fair.

21. As the Commissioner is satisfied that complying with section 1(1)(a) would in this case contravene the first data protection principle, he finds that the Trust was not obliged to have responded to the complainant's request in accordance with the duty imposed on it by the provisions of section 1(1)(a) by virtue of the provisions of section 40(5)(b)(i).

Right of appeal

22. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF