

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 May 2012

Public Authority: The Appointments Commission
Address: Blenheim House
Duncombe Street
Leeds
LS1 4PL

Decision (including any steps ordered)

1. The complainant has requested a copy of the resignation letter of the ex-chairman of South London Healthcare NHS Trust. The Appointments Commission disclosed some of this letter to the complainant, but withheld some of it under the exemption for third party personal information [section 40(2)].
2. The Commissioner's decision is that this information was correctly withheld under this exemption.
3. Therefore the Commissioner does not require any steps to be taken.

Request and response

4. On 11 December 2011, the complainant wrote to the NHS Appointments Commission (the "public authority") and made the following request in relation to the ex-chairman of South London Healthcare NHS Trust:

"Did George Jenkins resign?"

If yes please inform me the date he resigned from [South London Healthcare NHS Trust]

Please send me a copy of his resignation letter."

5. The public authority responded on 13 January 2012. It confirmed that Mr Jenkins did resign, that the date of his resignation letter was 3 October 2011, and that the resignation itself was effective on 31 October 2011. It also disclosed a redacted copy of his resignation letter, noting that it had applied section 40(2) to the information it had withheld from the letter.
6. The complainant wrote to the public authority on 18 January 2012 and requested an internal review. In this letter he agreed that Mr Jenkins' home address could be withheld.
7. Following an internal review the public authority wrote to the complainant on 26 January 2012 and upheld its previous use of section 40(2) to withhold the outstanding information.

Scope of the case

8. The complainant contacted the Commissioner on 31 January 2012 to complain about the way his request for information had been handled.
9. The scope of this case has been to consider the public authority's use of section 40(2) to withhold the outstanding information from the resignation letter.

Reasons for decision

10. Section 40(2) provides an exemption for information which is the personal information of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
11. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the "DPA"). This is an absolute exemption, and is therefore not subject to a public interest test.
12. The public authority has sought to rely upon this exemption to withhold an extract from the resignation letter of Mr Jenkins. It has argued that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA.
13. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of a third party, namely Mr Jenkins.

14. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.
15. In this case, the withheld information in question clearly relates to an identifiable individual. This information is also about that individual. Therefore, the Commissioner is satisfied that this information is the personal data of a third party.
16. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA.
17. The first principle requires, amongst other things, that personal data is processed fairly and lawfully. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
18. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.
19. The public authority has argued that the disclosure of the withheld information would be unfair and would have an unwarranted impact on Mr Jenkins' legitimate interests. It has pointed out that although it routinely publishes information about public appointments this does not include resignation letters and that if it expected to do so it would advise public appointees accordingly. Therefore, it has argued, Mr Jenkins would have had a reasonable expectation that this letter would not have been disclosed under the FOIA. Although it has disclosed some of the information from the resignation letter, it has pointed out that this matches information that is already in the public domain.¹

¹ The Commissioner assumes that this is a reference to the details of the resignation of Mr Jenkins on the press release issued by South London Healthcare NHS Trust that can be found at: <http://www.slh.nhs.uk/?section=news&article=108>

20. The complainant has pointed out that Mr Jenkins was (when he resigned) the chairman of an NHS Trust, and that the resignation was unexpected and at short notice. He has argued that at that time the Trust was in considerable financial difficulties, and has also queried the official explanation for the resignation. Therefore he has argued that it is in the public interest for the letter of resignation to be disclosed in full. Finally, he has also pointed out that when an MP resigns their resignation letter (or at least their reasons for resigning) is publicly read out. Bearing this in mind, the complainant feels that the full details of the resignation letter should be published.
21. The Commissioner is unable to detail the contents of the withheld information in this notice, without potentially disclosing details of that information. However, he considers that whilst a letter of resignation is about an individual's professional life, a resignation also quite clearly has a direct affect on their personal life. Therefore he considers that the withheld information relates to both the professional and personal life of Mr Jenkins.
22. The Commissioner notes the complainant's comments about the publication of the resignation letters of MPs. However, whilst he notes that Mr Jenkins occupied a senior post within the NHS, he has also noted the public authority's comments about what type of information it usually publishes, and the fact that it does not routinely publish resignation letters. The Commissioner considers that it is not general practice for resignation letters of employees of public authorities – even senior ones – to be made publicly available, although he accepts that in relation to senior employees a public authority may publish some information about their resignation by way of a press release.
23. The Commissioner notes that in this case a press release announcing Mr Jenkins' resignation was issued by South London Healthcare NHS Trust shortly after the date of the resignation letter.² However he understands that no information beyond the contents of the press release is in the public domain about the reasons for this resignation. He is also satisfied that the information that the public authority did disclose in relation to this request broadly mirrored the information already put into the public domain in the press release.
24. Bearing these points in mind, the Commissioner is satisfied that it is unlikely that Mr Jenkins would have had any reasonable expectation that

² <http://www.slh.nhs.uk/?section=news&article=108>

the withheld information would be disclosed under the FOIA when he submitted this resignation letter to the public authority.

25. Taking into account the impact that a resignation will have on an individual's personal life, and the reasonable expectations of the individual in question, the Commissioner considers that the disclosure of this information would be an invasion of the privacy of this individual.
26. In relation to the legitimate interests in disclosure of this information, the Commissioner has noted the complainant's comments as to why he considers that this information should be disclosed. He notes that at the time of this resignation the NHS Trust was seeking Foundation Trust status. Given this, he considers that the reasons behind the unexpected resignation of the Trust's chairman at that time were a matter of public interest and debate. As such, he considers that there is a legitimate interest in increasing the transparency of the factors that lay behind this resignation. Taking these factors into account, and bearing in mind the fact that the individual in question was a senior employee of the NHS, the Commissioner considers that the legitimate interest in the disclosure of this information is quite strong.
27. However, these legitimate interests have to be balanced against any negative impact to the rights and freedoms of the individual concerned. Bearing in mind his findings that the disclosure of this information would be an invasion of privacy, and taking into account the reasonable expectations of the individual concerned, the Commissioner finds the arguments in favour of withholding this information particularly weighty.
28. In addition to this, although he has noted that there is a legitimate interest in increasing the transparency of the factors that lay behind this resignation, the Commissioner notes that there is only a small amount of information redacted from the resignation letter. Therefore, he considers that the disclosure of this information would only give a limited amount of insight into this issue.
29. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be unfair and in breach of the first principle of the DPA. Therefore his decision is that the public authority correctly relied upon sections 40(2) with 40(3)(a)(i) to withhold this information.

Right of appeal

30. 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

31. 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.
32. 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