

## **Freedom of Information Act 2000**

### **Decision notice**

**Date:** 10 December 2013

**Public Authority:** North Yorkshire County Council

**Address:** County Hall  
Northallerton  
North Yorkshire  
DL7 8AL

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

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1. The complainant requested information concerning a care home that received placements from North Yorkshire County Council (the Council). The Commissioner's decision is that the Council has correctly withheld information under sections 12 (appropriate cost limit) and 41 (information provided in confidence) of the Freedom of Information Act (the Act). No further action is required.

#### **Case background**

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2. The complainant owned the care home that is the subject of this decision notice. The care home has now closed down due to a lack of placements it received from the Council's Social Services department.

## Request and response

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3. On 20 May 2011, the complainant wrote to the Council and requested information in the following terms (numbers have been added by the Commissioner for reference):

*"I require any information you have relating to [the nursing home]. Also regarding [complainant's business] registered at the above address.*

1. *The home had a number of complaints made against it both anonymous and by name persons We would like full details on these. Including dates and times.*
2. *I would also like copies of emails sent and received by a [named individual A] and and a [named individual B] Also between [named individual A] and his line Manager*
3. *Any Correspondence between [named individual A] and and [sic] a [named individual B] and members of his staff*
4. *Any correspondence between [named individual A] and a [named individual B] and members of his staff.*
5. *Communication between [named individual B] and his staff in relation to [the nursing home].*
6. *[named individual B] has a member of staff residing in [town where the nursing home was located]. Any email this member of staff has sent in relation to [the nursing home].*
7. *All information relating to placements and referrals made in the last two years by [named individual B] department including who dealt with the cases and reasons for placing them where they did.*
8. *Especially any emails/correspondence sent to representatives of N.Y. Pct and also to Commission to Quality Care (CQC) and to a [named individual C] in particular.*
9. *Emails sent and received by a [named individual D]. Including any correspondence or transcripts of telephone conversations.*
10. *Correspondence sent to other NY.C.C departments in relation to [the nursing home].*

*Any non electronic folders or files held by [named individual B]'s*

*department relating to [the nursing home] in particular will be helpful."*

4. The Council responded on 23 June 2011. It responded as follows:
  - Item 1 – information withheld under section 41 (information provided in confidence)
  - Items 2-6, 8-10 – information provided with redactions made in accordance with section 40 (personal data)
  - Item 7 – information withheld under section 12 (cost of compliance exceeds appropriate limit)
5. Following an internal review the Council wrote to the complainant on 8 September 2011 where it upheld its original decision.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 24 February 2012 to complain about the way his request for information had been handled. The case was originally closed in November 2012 as it appeared to the Commissioner that the complainant had abandoned his complaint. However, the complainant appealed again and explained the reasons why he had not been able to respond. The case was re-opened in May 2013.
7. During the course of the Commissioner's investigation he determined that further information that had been redacted under section 40 should be disclosed, and the Council has provided this information to the complainant.
8. The Commissioner confirmed with the complainant that the scope of the case was to consider whether the Council correctly applied section 12, 40 and 41 of the Act. However, regarding the information withheld under section 40, following the Commissioner concluding that further information should be provided the Commissioner has confirmed with the complainant that his objection is now only on section 12 and 41 of the Act. Therefore, this decision notice will concern itself only with the Council's application of section 12 to request 7 and section 41 to request 1.

## Reasons for decision

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### Section 12 – request 7

9. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
10. Under the terms of the Regulations the appropriate limit for the Council is £450. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
11. As the Council is entitled under the terms of the Regulations to charge a flat rate of £25 per hour, the £450 appropriate limit equates to 18 hours of staff time (or 1080 minutes).
12. The Council is also permitted to aggregate requests it receives. This means that it can decide to base its estimate on how long it takes to answer every request it has received from a complainant within a 60 working day period providing that the requests relate to similar information.
13. Therefore, the Council was within its rights to include the amount of time it spent in retrieving information for the other requests included in this case, and not just the one concerning referrals and placements. The Commissioner considers the Council has been lenient in this case by providing as much information as it could outside of the section 12 refusal.
14. In its submissions to the Commissioner, the Council explained that in the last two years there were 900 referrals of which 172 went on to be placements.
15. All of the information required by the request is held in manual form in the individuals' care files, and is not available in electronic form.

Therefore, in order to extract the information that came within the scope of the complainant's request it would have to conduct a manual search through all of the placement and referral files.

16. The Commissioner notes that a care file would vary in size but is likely to contain a broad range of documents which would need to be reviewed to determine what relevant the information was held. The Council explained that there is no standard way to record why someone was placed in a specific care home, which makes it problematic to quickly identify the required information. The task is made more difficult as the complainant asked for "all information", so to find it would require reviewing a significant number of documents.
17. The Council's estimate for locating, retrieving and extracting the required information from each of the 172 placements is that it would take approximately 30 minutes. The Commissioner considers it is possible the estimate of 30 minutes per file could be excessive. However, he notes that the scope of the request includes not only the 172 placements but also the remaining 728 referrals, which is a vast amount of information to obtain within 1080 minutes. For example, even at a much reduced estimate of five minutes for a referral and 30 seconds for a placement it would still take the Council 1224 minutes to obtain the information within the scope of the request, which is over 20 hours.
18. Based on the volume of information contained within the scope of the request the Commissioner considers it to be more probable than not that compliance with the request would exceed the appropriate limit. Therefore he considers that the Council has correctly applied section 12 to this request.

### **Section 41 – request 1**

19. Section 41(1) of the Act states that information is exempt if-
  - a. *"it was obtained by the public authority from any other person (including another public authority), and*
  - b. *the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*
20. Since Section 41 is an absolute exemption there is no requirement for an application of the conventional public interest test. However, disclosure of confidential information where there is an overriding public interest is a *defence* to an action for breach of confidentiality. The Commissioner is therefore required to consider whether the Council

could successfully rely on such a public interest defence to an action for breach of confidence in this case.

Was the information received from another person?

21. The withheld information consists of two complaints made regarding the nursing home (this figure was supplied to the complainant in the refusal notice). The Council received one of the complaints from the Care Quality Commission (CQC), who had received the complainant from a member of the public. The other complaint was received by the Council directly from a member of the public. The Commissioner is therefore satisfied that both complaints were received by the Council from another person.

Would disclosure constitute an actionable breach of confidence?

22. In considering whether disclosure of the withheld information would constitute an actionable breach of confidence the Commissioner has considered the following:

- whether the information has the necessary quality of confidence;
- whether the information was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information and to the detriment of the confider.

*Does the information have the necessary quality of confidence?*

23. Complaints about the provision of care to vulnerable groups are by their very nature made in confidence. The Commissioner considers that the information is not available through other means and is considered to be highly sensitive as the complaints provide details about the standard of care that was being received by individuals in a nursing home.

*Was the information imparted in circumstances importing an obligation of confidence?*

24. The complaints were made through appropriate channels to the Council's Social Services department and to the regulator of care providers, and were not put into the public domain. Both complaints were clearly considered to be both highly sensitive and confidential. The Commissioner is satisfied that the information was imparted in circumstances importing an obligation of confidence.

*Would disclosure be an unauthorised use of the information and to the detriment of the confider?*

25. In this case, the Commissioner considers that disclosure would be contrary to the reasonable expectations of the individuals who made the complaints. The views expressed are noticeably candid and show that the individuals have an emotional attachment to the matters at hand. The Commissioner is therefore satisfied that unauthorised use of the report could cause detriment to the confiders, particularly in respect of their right to privacy.
26. The Commissioner considers that the above analysis shows that disclosure would constitute an actionable breach of confidence. He has gone on to consider the public defence for a breach of confidence.

#### Public interest in confidence

27. The Commissioner's view is that the grounds for breaching confidentiality must be valid and very strong since the duty of confidence is not one which should be overridden lightly. In weighing the public interest in keeping the information confidential, the Commissioner has been mindful of the wider public interest in preserving the principle of confidentiality.
28. The Commissioner considers that there is a strong argument that people who make serious complaints about sensitive subjects such as the provision of healthcare should have their confidence protected. To disclose such information would dissuade others from making complaints as they could not guarantee that their views would be kept out of the public domain.
29. It is also apparent that complaints made to social services and the CQC are not taken at face value, but are used to help form the basis of investigations or enquiries into the provision of the care service. A complaint alone is not sufficient to close down a nursing home, but it can be the beginning of the process and the Commissioner considers there is a strong public interest in allowing regulators to obtain valuable information about how a service is run.

#### *Complainant's view*

30. The complainant has argued that when the nursing home was closed down a number of people lost their jobs. This has been to their detriment and the complainant argues that the withheld information is directly responsible for this.

#### *Commissioner's view*

31. The Commissioner acknowledges that the loss of employment can generate a public interest in information being disclosed. However, it is not considered significant enough in this situation to be sufficient to present a public interest defence in disclosure. As has been mentioned

previously it is not purely down to the complaints that resulted in the nursing home being closed and the subsequent loss of employment for the individuals working there.

32. As there is no reasonable case for a public interest defence in disclosure the Commissioner is satisfied that the information has been correctly withheld under section 41.



## Right of appeal

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33. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

34. 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.
35. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**