

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 April 2013

**Public Authority:** Nottinghamshire Healthcare NHS Trust

**Address:** The Resource  
Duncan Macmillan House  
Porchester Road  
Nottingham  
NG3 6AA

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

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1. The complainant has requested an internal report about the conduct/competency of a named psychiatrist. Nottinghamshire Healthcare NHS Trust (the Trust) refused to confirm or deny whether or not the requested information was held under section 40(5) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Trust was correct to neither confirm or deny whether the requested information was held under section 40(5) FOIA.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 13 September 2012, the complainant wrote to the Trust and requested information in the following terms:  
  
"Enquiry Subject: [named psychiatrist]  
  
Has any internal report been produced about the conduct/competency of this psychiatrist – if so could I see a copy"
5. The Trust responded on 10 October 2012. It applied section 40(5) FOIA.

6. Following an internal review the Trust wrote to the complainant on 23 November 2012. It upheld its application of section 40(5) FOIA to neither confirm or deny whether the requested information was held.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 23 November 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Trust was correct to neither confirm or deny whether the requested information was held in this case under section 40(5) FOIA.

### **Reasons for decision**

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9. Section 40(5) of FOIA provides that a public authority is not obliged to confirm or deny whether information is held if to do so would:
  - a) constitute a disclosure of personal data, and
  - b) this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
10. In this case the request is for an internal report about the conduct/competency of a named psychiatrist. If the Trust were to confirm or deny whether this information were held, this would constitute a disclosure of personal data about the named psychiatrist.
11. The DPA defines personal information as:

*'data which relate to a living individual who can be identified*  
*a) from those data, or*  
*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual'.*
12. The Commissioner recognises that the named psychiatrist was identified in the request and complying with section 1(1)(a) FOIA would confirm or deny whether an internal report about the data subject's conduct/competency exists.

13. The Commissioner has gone on to consider whether confirming or denying that the requested information is held would breach a data protection principle?
14. The first data protection principle says that personal data must be processed fairly and lawfully.
15. Confirming or denying whether the information was held would communicate whether or not an internal report into the conduct/competency of a named psychiatrist exists. The Trust has argued that this would be unfair to the data subject.
16. An important consideration when assessing whether it would be fair to process personal data, is the data subject's expectation of disclosure. The Trust has explained that the data subject would not have expected information as to whether or not they were subject to an internal investigation to be disclosed into the public domain. Furthermore it said that confirming or denying whether this information was held could cause the data subject damage and distress.
17. The Trust acknowledged that despite the reasonable expectations of the data subject and that damage or distress may result from the confirmation or denial, it may still be fair to publicly disclose the information if there is a legitimate public interest to do so which overrides the interests of the data subject.
18. The Trust accepted that there is a legitimate public interest in knowing health professionals are fit to practice, however it considers that this legitimate public interest is adequately met by its internal disciplinary procedures and those of the GMC. It said that if the Trust is unable to resolve matters internally it is under an obligation to refer cases to the GMC.
19. The Commissioner considers that the data subject would not have expected information as to whether or not they were subject to an internal investigation into their conduct/competency would be disclosed into the public domain. Furthermore the Commissioner accepts that confirmation or denial in this case could cause damage and distress to the data subject from a personal perspective as well as in terms of their professional reputation. The Commissioner has previously established that it will be unfair to confirm or deny whether named doctors are the subject of a GMC investigation if that investigation is at a preliminary stage and has not gone to a public hearing. In this case, the request relates to whether or not an internal investigation was carried out by the Trust, this would therefore be prior to any form of GMC investigation if it occurred. The Commissioner considers that it would be unfair to confirm or deny whether the requested information is held and furthermore the

rights of the data subject would not be outweighed by the legitimate public interest in this case.

20. In view of the above, the Commissioner finds that confirming or denying whether the Trust holds information within the scope of the request would contravene the first data protection principle. The Trust was therefore entitled to rely on the exemption at section 40(5)(b)(i) of the FOIA.

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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**