

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 August 2013

**Public Authority:** Norfolk and Suffolk Probation Trust

**Address:** Peninsular House  
11-13 Lower Brook Street  
Ipswich  
IP4 1AQ

### Decision (including any steps ordered)

---

1. The complainant requested various information about an employee of Norfolk and Suffolk Probation Trust (the Trust). The request was refused, with the exemption provided by section 40(2) (personal information of a third party) of the FOIA cited.
2. The Commissioner's decision is that the Trust breached sections 1 and 10 of the FOIA in that it failed to respond to one part of the request. In relation to the remainder of the request the decision of the Commissioner is that all of the information requested is exempt by virtue of sections 40(1) (personal information of the requester) or 40(2). The Trust is not, therefore, required to comply with those requests.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
  - Provide a response to the part of request (4) that asks for "*the date*".
4. The Trust must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

---

5. On 21 September 2012 the complainant wrote to the Trust and requested information in the following terms:

*"[In relation to [named redacted]:]*

*(1) How many complaints have been made against her in how many years in the probation service?*

*(2) How many times she has been off sick and long term sick and for what reasons?*

*(3) Have there been any past problems with her behaviour or health?*

*(4) Why was she removed from her post at HMP Highpoint and the date she was moved?*

*(5) [In relation to meetings with me] copies of her reports, notes of our meetings with the dates and duration of these meetings.*

*(6) [Details] of her qualifications and any refresher courses she has undertaken since."*

6. The Trust responded on 11 October 2012. It stated that the information specified in request (5) was not held. In relation to the remainder of the requests, it cited the exemption provided by section 40(2) (personal information) of the FOIA.
7. On 19 November 2012 the complainant responded and requested an internal review. The Trust responded with the outcome of the review on 9 January 2013. The previous response was upheld, albeit the Trust noted that request (4) had been answered previously, in a letter dated 9 January 2013.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 10 April 2013 to complain about the response to his information requests. After an exchange of correspondence, the complainant in a letter dated 17 June 2013 confirmed that he did not agree with the reasons given for the refusal of his information requests and asked the Commissioner to issue a decision notice.

## **Reasons for decision**

---

### **Sections 1 and 10**

9. As noted above, at internal review stage the Trust stated that it had complied with request (4). However, in the same response the Trust noted that the request for the date the individual in question had been

transferred had not been addressed. The internal review response again did not provide a response to that request.

10. In failing to respond to this part of request (4) within 20 working days of receipt, the Trust breached the requirements of sections 1 and 10 of the FOIA. At paragraph 3 above the Trust is now required to remedy this breach.

## **Section 40**

11. The Commissioner has considered the exemption cited by section 40(2) in relation to requests (1) to (3) and (6). As covered below, request (5) has been considered separately under section 40(1).
12. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information in question must be the personal data of an individual aside from the requester. Secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.
13. Covering first whether this information does constitute personal data, the definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

*"personal data" means 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".*

14. The request is specifically for information about a named individual. Clearly, therefore, this information would both relate to and identify the individual named in the request. The view of the Commissioner is that it is clear that the information falling within the scope of requests (1) to (3) and (6) would be the personal data of the individual named in the request.
15. Turning to whether the disclosure of this personal data would be in breach of any data protection principle, the Commissioner has focussed on the first data protection principle, which requires that personal data be processed fairly and lawfully, and whether disclosure would be, in general, fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the

consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.

16. Dealing with request (1) first, the potential for detriment to the named individual through disclosure of information relating to complaints made against them is a significant issue here. To release the fact that a complaint has been made against an employee may lead to assumptions being made about that employee's competence. However, the complaint may be unsubstantiated or malicious, or certain employees may be involved more frequently with difficult decisions that are more likely to result in dissatisfaction. Therefore, releasing this information could be misleading and unfair.
17. Given the above, the view of the Commissioner is that the individual named in the request would hold a reasonable expectation that this information would not be disclosed. The consequence of disclosure upon the named individual would be distress resulting from the assumptions referred to in the preceding paragraph being made.
18. Moving to requests (2) and (3), section 2 of the DPA defines what is to be considered *sensitive* personal data. This includes personal data consisting of information as to physical health. The view of the Commissioner is that the information specified in requests (2) and (3) would be sensitive personal data as this would relate to the physical health of the data subject. Sensitive personal data has, by its very nature, been deemed to be information that individuals regard as the most private information about themselves. Disclosure of this type of information is likely to have a highly distressing effect on the data subject.
19. In relation to request (6), the view of the Commissioner is that an employee would not expect that details of individual qualifications would be disclosed via the FOIA. This is information that the employee would have shared with the public authority on the understanding that this was to be used for personal purposes. Disclosures against that expectation would be likely to result in distress to the subject of that information.
20. Whilst the Commissioner has found that disclosure would be counter to the expectation of the data subject and therefore likely to result in distress, these considerations may be outweighed if there is a legitimate public interest in the disclosure of this information. Whilst section 40(2) is an absolute exemption and not qualified by the public interest, the public interest is relevant here as it is necessary for there to be a legitimate public interest in order for disclosure to be compliant with the DPA, and a sufficiently strong interest may outweigh the factors against disclosure described above.

21. In this case, however, the Commissioner can see no public interest in favour of disclosure. Whilst the Commissioner is aware that the complainant has expressed some dissatisfaction with the work of the individual named in the request, that does not itself amount to a legitimate public interest and there is no evidence that the complainant's dissatisfaction is a symptom of wider concerns with the actions of the data subject that may be a ground for disclosure in the public interest.
22. In relation to requests (1) to (3) and (6), the Commissioner has found that disclosure would be counter to the expectations of the data subject and that disclosure against that expectation would be likely to be distressing to that individual. Having also found that there is no legitimate public interest in the disclosure of that information, his conclusion is that disclosure would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged in relation to these requests and the Trust is not required to disclose this information.
23. In relation to request (5), the Commissioner has considered section 40(1). This section provides that information that is the personal data of the individual making the information request is exempt from the FOIA. This exemption requires only that the information is the personal data of the requester; no consideration of the data protection principles is necessary. Whilst the Trust did not cite this exemption, for the reasons set out below the view of the Commissioner is that the wording of the request suggests clearly that this information may be the personal data of the complainant and so he has pro-actively considered whether section 40(1) applies.
24. The view of the Commissioner is that the wording of request (5) makes it clear that any information falling within the scope of it would both relate to and identify the complainant. This information would, therefore, be the personal data of the complainant. The conclusion of the Commissioner is that section 40(1) is engaged in relation to request (5) and to the Trust was not, therefore, required to comply with this request. The Commissioner comments further on this request in the "Other matters" section below.

## **Other matters**

---

25. The Commissioner has found that the information falling within the scope of request (5) would be the personal data of the complainant. Whilst this means that this information is exempt from the FOIA, section 7 of the DPA provides to individuals a right of access to their own personal data.

26. The complainant may, therefore, wish to make a request for this information under section 7 of the DPA. This type of request is known as a 'subject access request' and should be made in writing. An organisation receiving such a request is permitted to charge up to a maximum of £10 to process it and must provide a response within 40 calendar days of receipt.
27. The complainant should note that the Trust has previously advised him that this information is more likely to be held by the Prison Service. If he chooses to make a subject access request for this information, he may wish to consider directing this to the Prison Service rather than to the Trust.

## Right of appeal

---

28. 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)

29. 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.
30. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**