

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 September 2013

Public Authority: NHS Commissioning Board
Address: Southside
105 Victoria Street
London SW1E 6QT

Decision (including any steps ordered)

1. The complainant has requested information held in a named GP's appraisal regarding a complaint he had made about that GP. The request was considered under the Data Protection Act 1998 (the "DPA") and then under the FOIA. Under the DPA, the NHS North Lancashire Teaching Primary Care Trust (the "PCT") informed the complainant that the GP's appraisal did not contain his personal data. Under the FOIA, the PCT confirmed that the appraisal was the personal data of the GP. It therefore applied section 40(2) of the FOIA to this request.
2. The Commissioner's decision is that the PCT has correctly refused this request under section 40(2) of the FOIA. He does not require any further steps to be taken.

Background

3. At the date of the information request and complaint to the Commissioner the responsible public authority was the PCT. However, from 1 April 2013 the PCT was disbanded and its functions taken over by the NHS Commissioning Board. Therefore for the purposes of this decision notice the public authority is the NHS Commissioning Board. However, for the sake of clarity this decision notice will refer to the PCT as if it were the public authority.

Request and response

4. On 5 September 2012, the complainant wrote to the PCT and with reference to his GP's annual appraisal, requested the following information under the FOIA and the DPA:

"...all the information held in that appraisal in relation to myself and the results of that investigation".

5. By way of background, the complainant had previously complained about his GP and had subsequently been informed that the circumstances of his complaint had been discussed in the GP's appraisal.
6. The PCT responded on 18 October 2013. It stated that it considered the information contained in the appraisal was the personal data of the GP. It explained that neither the appraiser nor the GP had consented to the release of the information.

Scope of the case

7. The complainant complained to the Information Commissioner's Office about the PCT's response on 1 November 2012. The PCT informed the Commissioner that the request had been handled under the DPA and confirmed that it considered the appraisal did not contain the personal data of the complainant as the information contained within the appraisal was of an anonymous nature. It explained that should the request be considered under the FOIA, it would apply section 40(2) to the information as it contains third party personal data.
8. The complaint was first considered under the DPA as case reference RFA0471108. In his assessment the Commissioner explained that he considered it is likely the appraisal does not contain the personal data of the complainant and therefore it is likely the PCT had complied with the DPA.
9. The Commissioner then considered the refusal of the PCT to provide the requested information under the FOIA.
10. As part of this FOIA case, the Commissioner has reviewed the withheld information and is satisfied the appraisal does not contain the personal data of the complainant. He therefore considers the scope of this case to be concerned with the PCT's application of section 40(2) to the withheld information.

Reasons for decision

11. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the DPA states that personal data must be processed fairly and lawfully.
12. 'Personal data' is defined under section 1(1) of the DPA as 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.
13. The Commissioner is satisfied that the data requested relates to a living individual who may be identified from that data and that it constitutes personal data.

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

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to provide information concerning the appraisal of a named GP and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
16. The PCT has argued that a GP has a reasonable expectation that an appraisal (or any part thereof) would remain confidential and not be disclosed. It has explained the NHS Lancashire Appraisal Policy states that the detail of the discussions during the appraisal interview is confidential and that this is in line with guidance taken from the GMC's Framework for Appraisal and Revalidation.

17. The PCT has argued that the consequences of disclosure are likely to have a detrimental or distressing effect upon the GP. He has no expectation that a document which concerns his professional reputation would be disclosed.
18. Both the GP and the appraiser have both explicitly requested that the information should not be disclosed.
19. Furthermore, the PCT considers that although the complainant is interested in the requested information, there is no wider legitimate public interest in this information being released. In fact it has argued that there is a significant public interest in support of protecting the integrity of annual appraisals, thus enabling those employed in the public sector, including GPs, to engage in open and honest dialogue about their performance and development, in order to learn lessons and improve the service they provide to the public.

Conclusions

20. The Commissioner is satisfied that it would be unfair to provide any extract from the GP's appraisal to the complainant. Such disclosure would contravene the first data protection principle and would not be fair.
21. The Commissioner is therefore satisfied that the PCT was correct to apply section 40(2) of the FOIA to this request. The requested information is the personal data of a third party (the named GP) and he would have no expectation that this data should be disclosed to the public at large. There is no legitimate public interest in the disclosure of this information.
22. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Other matters

23. The Commissioner appreciates that the complainant considers the appraisal contains his personal data. However, as noted above, this has previously been considered by the Commissioner under case reference RFA0471108. The Commissioner has confirmed to the complainant that the appraisal does not contain his personal data. However the complainant does not accept this.

Right of appeal

24. 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

25. 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.
26. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF