

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 January 2014

Public Authority: South East Coast Ambulance Service Foundation Trust

Address: Heath Road
Coxheath
Kent
ME17 4BG

Decision (including any steps ordered)

1. The complainant has requested the last five sets of minutes of the SCOT meetings. The South East Coast Ambulance Service Foundation Trust (the Trust) refused to provide the requested information under section 36(2)(b)(i) and (ii) and section 36(2)(c) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Trust has correctly applied section 36(2)(b)(ii) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 March 2013 the complainant requested information of the following description:

"I require the minutes of the SCOT meetings."

5. On 2 April 2013 the Trust asked the complainant to clarify which dates he required. On the same date the complainant clarified that he required the last five sets of minutes. On 19 April 2013 the Trust responded, it refused to provide the requested information under section 41 FOIA.

6. The complainant requested an internal review. The Trust sent the outcome of its internal review on 25 June 2013. It revised its position. It said that it had incorrectly applied section 41 FOIA. Instead it said that section 36(2)(b)(i) and (ii) and section 36(2)(c) FOIA were applicable.

Scope of the case

7. The complainant contacted the Commissioner on 7 October 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Trust was correct to apply section 36(2)(b)(i) and (ii) and section 36(2)(c) to the withheld information.

Reasons for decision

9. Section 36 FOIA provides that,

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(2)(b) would, or would be likely to, inhibit-

- i. the free and frank provision of advice, or
- ii. the free and frank exchange of views for the purposes of deliberation, or

(2)(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

14. The Trust has applied section 36(2)(b)(i) and (ii) and section 36(2)(c) FOIA to the withheld information. The Commissioner has first considered section 36(2)(b)(ii) first in this case. In determining whether section 36(2)(b)(ii) was correctly engaged by the Commissioner is required to consider the qualified person's opinion as well as the reasoning which informed the opinion. Therefore in order to establish that the exemption has been applied correctly the Commissioner must:

- Establish that an opinion was given;
- Ascertain who was the qualified person or persons;

- Ascertain when the opinion was given; and
 - Consider whether the opinion was reasonable.
16. The Trust has explained that Mr Paul Sutton, the Trust's Chief Executive, is the qualified person in this case and his opinion was obtained on 24 June 2013. The Trust has provided the Commissioner with an explanation of the submissions put to the qualified person and a copy of the qualified person's opinion.
 17. The following submissions were put to the qualified person in relation to the application of section 36(2)(b)(ii):
 - The qualified person had access to the detailed timeline of events leading up to the request for the internal review and a copy of the requested SCOT meeting minutes.
 - The qualified person was provided with evidence supporting engagement of the exemption, a summary of which has been set out below.
 18. The Trust confirmed that the qualified person's response agrees that section 36(2)(b)(ii) is engaged. It said that the qualified person's opinion is that the prejudice in this case would be likely to occur.
 19. The withheld information is minutes of five SCOT meetings. The Trust explained that SCOT meetings are regular meetings when its Senior Clinical Operations Team get together to discuss matters relating to the operational areas of the Trust. It said that the meetings are an occasion for open, frank discussions and not all that is planned/mentioned within these meetings will always come to fruition. It is the occasion to discuss sickness, performance, conveyance rates, appraisals and many other issues. It said that if the Trust were obliged to release this information then it is likely to stifle open discussion and innovation which should take place to improve patient care.
 20. The Commissioner considers that the withheld minutes are records of candid discussions between the senior management team. Based upon this and the submissions which the Trust has confirmed were put to the qualified person, the Commissioner is of the view that the opinion of the qualified person is a reasonable one and that it has been reasonably arrived at. He therefore finds that section 36(2)(b)(ii) was correctly engaged.
 21. As the Commissioner has decided that the exemption is engaged, he has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In his approach to the competing public interest arguments in this case, the Commissioner has drawn heavily upon the Information Tribunal's Decision in the case of Guardian Newspapers Limited and Heather Brooke v Information Commissioner and BBC (the Brooke case)¹.

22. The Commissioner notes, and adopts in particular, the Tribunal's conclusions that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely, to have the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest. However, in order to form the balancing judgment required by section 2(2)(b), the Commissioner is entitled, and will need, to form his own view as to the severity of, and the extent and frequency with which, any such detrimental effect might occur. Applying this approach to the present case, the Commissioner recognises that there are public interest arguments which pull in competing directions, and he gives due weight to the qualified person's reasonable opinion that disclosure would, or would be likely to inhibit the free and frank provision of advice.

Public interest arguments in favour of disclosing the requested information

23. The Trust has not acknowledged any public interest arguments in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

24. The Trust said that it would not be in the public interest to hamper open discussion with the SCOT meetings as this would hinder improvements to patient care.

Balance of the public interest arguments

25. The Commissioner considers that there is a public interest in the Trust operating in an open and transparent way and being held to account for decisions made. He also considers that there is a public interest in releasing information that will help members of the public understand the reasoning why decisions are made.

¹ EA/2006/0011; EA/2006/0013

26. The Commissioner considers that the withheld minutes contain very candid and open discussions in some very sensitive areas. He considers that it is in the public interest not to hamper the candour of such discussions which are important to improve governance and ultimately patient safety.
27. Furthermore the Commissioner acknowledges that the requested minutes were very recent at the time the request was made and therefore the issues discussed were live and ongoing. This adds greater weight to the public interest arguments in favour of maintaining the exemption.
28. On balance the Commissioner considers that in this case, the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption. Section 36(2)(b)(ii) FOIA was therefore correctly applied in this case.

Right of appeal

29. 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

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

30. 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.
31. 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
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Wycliffe House
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SK9 5AF