Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2015

Public Authority: Burton Hospitals NHS Foundation Trust
Address: Queen's Hospital
Belvedere Road
Burton-on-Trent
Staffordshire
DE13 0RB

Decision (including any steps ordered)

1. The complainant requested the names of the nurses overnight on a date in 2013 at Burton Hospitals NHS Foundation Trust (the Trust). The Trust withheld the information, citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.

2. The Commissioner's decision is that the Trust has correctly applied this exemption and does not require the Trust to take any steps.

Request and response

3. On 6 October 2014 the complainant made the following request for information relating to his inpatient care on the overnight of 14 and 15 February 2013, ward 4:

'1. The grade of the nurse who administered codeine and paracetamol. The Ombudsman has described her as 'name redacted'. 'Ms' is a neutral alternative to 'Mrs' or 'Miss', not a grade of nurse.

2. The grade(s) and names(s) of the other overnight nurse(s).

3. Which of the overnight nurses were qualified to administer morphine and Tramadol? Also, to prescribe and administer Buscopan? And whether these drugs were available at the ward at the time.'

4. On 13 October 2014 the Trust responded that the named nurse is a Registered General Nurse (RGN). The Trust was '*not in a position to be able to supply the names of the other nurses'.* However, the Trust confirmed that there were two RGN's and three Healthcare Assistants (HCA's) on duty.. [and] …one extra HCA. The Trust also stated that

'*Both of the RGN's on duty were qualified to administer Tramadol and Morphine. However, nurses are not qualified to prescribe medications, and so they would not have been able to prescribe Buscopan, and would have had to contact a doctor to do so….The ward keeps a stock of many analgesics, including the ones mentioned'*

5. On 5 May 2015, the complainant queried the answer provided and requested further details:

'*1. Advise the grades and names, individually, of the overnight nurses. That is, the other two Registered General Nurses and the four Healthcare Assistants. Also.. the time of shift start and finish.*

2. …please identify the grades and names, individually, of the initiallers and signatories in the following [3] documents…'

6. The Trust provided a further response on 10 June 2015 giving some information on grades. It refused to provide the names of the staff.

7. On 17 June 2015 the complainant queried the response from the Trust.

8. On 8 July 2015 the complainant contacted the Information Commissioner. The Commissioner advised that the letter from the complainant to the Trust on 17 June 2015 should be treated as a request for an internal review.

9. The Trust held a meeting with the complainant on 29 July 2015 with a letter recording the meeting sent to the complainant on 3 August 2015. The start and finish times of the shifts at the time was provided.

10. On 13 August 2015 the Trust provided the outcome of the internal review. It refused the names of staff who were involved in the care of the complainant in February 2013 and cited section 40(2) (Personal Information) of the FOIA.

11. On 6 and 17 August 2015 the complainant contacted the Commissioner as he was dissatisfied:

'I seek a translation of that which is already there….

… if the Trust truly sought not to disclose staff names, it would not state 'names' by illegible signatures or by initials on the particular documents, let alone names by print and by signature, on the diverse examples referred to you. Some of the examples include the names of staff who were involved in my care. Any so-called right to privacy is inapplicable, in any event, given many years of custom and practise.'

Scope of the case

12. The focus of the Commissioner's investigation is to determine whether the Trust is entitled to rely on section 40(2) of the FOIA as a basis for refusing to disclose the names of the nurses.

Reasons for decision

Section 40(2) – Third party personal data

13. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

14. Personal data is defined by the DPA as any information relating to a living and identifiable individual.

15. The withheld information in this case comprises the names of the nurses. The Commissioner is satisfied that the requested names relate to living individuals who may be identified from that data. The requested information therefore falls within the definition of personal data as set out in the DPA.

Would disclosure breach the Data Protection Principles?

16. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.

17. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of

the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

18. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed.

19. The Commissioner has issued guidance about requests for personal data about public authority employees: https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

20. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job.

21. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so.

22. The Trust has confirmed to the Commissioner that the roles of the nurses are junior members of staff. None are responsible for major policy decisions, expenditure of public funds nor do they represent the Trust to the outside world.

23. The Trust also contacted the staff employed by the Trust and asked whether they are willing to consent to the disclosure of their names. None of them have provided their consent. The Trust did not succeed in contacting the Agency staff.

24. Therefore the Commissioner understands that the Trust would not routinely make public such information about junior nursing staff and the available individuals in this case have not consented to such a disclosure.

Consequences of disclosure

25. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named nurses. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their

private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.

26. The Trust has stated that the information relates to the staff members' public lives, however, disclosure could impact on their private lives as it is unknown what the complainant intends to do with the information.

27. The Trust has provided arguments that '*disclosure of the staff members' names would breach their right to privacy. The Trust has a duty to protect its staff from any potential harm or harassment*.'

28. The Commissioner is satisfied that the nurses would have a reasonable expectation that their names would not be placed into the public domain by disclosure under the FOIA. Therefore he considers that disclosure of this information would be an unfair invasion of the privacy of the individuals, and as such may cause them some distress.

Balancing the rights and freedoms of the individual with the legitimate interests in disclosure

29. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.

30. Notwithstanding the staff members' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information (their names) if there is a more compelling public interest in disclosure.

31. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the member of staff concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.

32. The Commissioner notes that the complainant has a personal interest in knowing the names of the staff who were involved in his care in February 2013.

33. The Trust does not accept that there is any legitimate public interest in disclosure of the staff members' names. '*The individuals were dealt with appropriately and the issues addressed. The Trust has not received any*

other complaints of a similar nature for this particular ward or nursing team.'

34. The Trust does not accept there is a wider public interest in disclosing personal information about its junior staff.

35. The Commissioner accepts that there is a legitimate interest in overall transparency in the way a public authority such as the Trust conducts its business. However, there is no presumption that this should automatically take priority over personal privacy. The Commissioner judges each case on its merits.

36. In this case, the Commissioner is not convinced that the specific information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data of the nursing staff.

37. Having considered the Trust's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that the Trust has put forward for protecting the individuals' personal data, namely:

    - the individuals' likely expectation about how their personal data will be managed, implicit in their role as a junior members of the nursing staff
    - the individuals' lack of consent to its release; and
    - the possible negative consequences to the individuals of releasing the information.

38. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the nursing staff and that it would not be fair to disclose the requested information in this case.

Conclusions

39. Balancing the above, the Commissioner is satisfied that the nursing staff would have no reasonable expectation that the information in question would be disclosed to the world at large. Therefore, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the Trust's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

40. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.

42. 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 .....

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