

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2015

Public Authority: East Lancashire Hospitals NHS Trust

Address: Trust Headquarters
Royal Blackburn Hospital
Haslingden Road
Blackburn
Lancashire
BB2 3HH

Decision (including any steps ordered)

1. The complainant requested information about an individual employed by the East Lancashire Hospitals NHS 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 3 February 2015 the complainant requested the following information under FOIA:

'The date that Trainee Junior Doctor (name redacted) left ELHT (BRH) in 2014 to return to Canada'

4. After the involvement of the Information Commissioner, the Trust responded on 16 July 2015. It confirmed that it had information when the junior doctor left the Trust but not when the junior doctor returned to Canada. The Trust stated that it considered the end date to be personal data and therefore exempt under section 40 of the FOIA.
5. On 18 August 2015 the Trust provided an internal review which upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 18 August 2015 to complain about the way his request for information had been handled.
7. 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 withheld information.

Reasons for decision

Section 40(2) – Third party personal data

8. 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

9. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
10. A named individual's leaving date forms a detailed part of their employment history and the Commissioner is satisfied that the individual concerned could be identified if their leaving date from the Trust were to be released. Therefore, the requested information is clearly the personal data of the named junior doctor.

Would disclosure breach the Data Protection Principles?

11. 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.
12. 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

13. 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.

14. 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
15. 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. 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.
16. The Trust has confirmed that the role of the trainee doctor is a junior role and as 'part of all Junior Doctor's rotations, they are provided an educational supervisor who is a senior clinician. They are also supervised and supported via the regional medical Dean.'
17. The Trust went on to say that it treats its senior staff in a more open way: 'the Trust is open and accountable about the remuneration, declarations of interest, starting and leaving dates of its senior members of staff, this is produced in its annual report and is noted at regular intervals within public Board of Director's meetings.'
18. However, this role is a junior role. The Trust considered that the named trainee doctor has a reasonable expectation that their leaving date is not disclosed to the public under FOIA. The junior doctor has not consented to a release of any of their data including the leaving date from the Trust and the Trust is not able to contact them to discuss any further.
19. Therefore the Commissioner understands that the Trust would not routinely make public such information about a junior doctor and the individual in this case has not consented to such a disclosure.

Consequences of disclosure

20. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named junior doctor. 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.

21. The Trust has provided the Commissioner with an explanation as to the possible consequences of disclosure: 'the release of this information could give rise to potential fraudulent activity as, being a registered medical professional, there is a risk that an individual may seek to impersonate a registered professional by knowing key information about employment.'
22. The Commissioner is satisfied that the named junior doctor would have a reasonable expectation that the leaving date 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 individual, and as such may cause them some distress.

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

23. 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.
24. Notwithstanding a trainee doctor's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information (their leaving date) if there is a more compelling public interest in disclosure.
25. 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.
26. The Commissioner notes that the complainant has a personal interest in knowing the leaving date of the named trainee doctor from the Trust's employment.
27. The Trust accepts there may be some interest in its medical staff and accordingly, publishes some information about its senior staff in its annual report. However, it does not accept there is a wider public interest in disclosing personal information about its junior staff.
28. 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.

29. 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 named trainee doctor.
30. 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 individual's likely expectation about how their personal data will be managed, implicit in their role as a junior trainee doctor;
 - the individual's lack of consent to its release; and
 - the possible negative consequences to the individual of releasing the information.
31. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the named junior doctor and that it would not be fair to disclose the requested information in this case.

Conclusions

32. Balancing the above, the Commissioner is satisfied that the named junior doctor would have no reasonable expectation that the information in question would be disclosed to the world at large. The Trust does not publish such information for junior members of staff.
33. 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 individual concerned. The Commissioner upholds the Trust's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

34. 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

35. 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.
36. 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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