

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2016

Public Authority: Belfast Health & Social Care Trust
Address: 1st Floor
Nore Villa
Knockbracken Healthcare Park
Saintfield Road
Belfast
BT8 8BH

Decision (including any steps ordered)

1. The complainant has requested information relating to Mortality and Morbidity meetings within the Trust. The Trust has applied section 41 of FOIA (information provided in confidence) as a basis for non-disclosure of the requested information.
2. The Commissioner's decision is that the Trust has correctly applied section 41 of FOIA to the requested information.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. On 22 July 2015, the complainant wrote to the Trust and requested the following information:

"a copy of all the minutes for BCH's Urology Dept Monthly Mortality and Morbidity meetings that have taken place so far from January 2014 to date."
5. The Trust responded on 18 August 2015, refusing to disclose the requested information and citing the exemptions under sections 40(2)

(personal data of a third party) and 41 (information provided in confidence).

6. As the request was a fresh request made by the complainant in the same terms as an earlier request, in respect of which the Trust had refused to provide the information on the same grounds as above, and had retained its position at internal review, the Commissioner did not consider it necessary in this case for the Trust to carry out an internal review of its decision regarding the request of 22 July 2015 as its position remains the same as in the earlier request.

Scope of the case

7. The complainant contacted the Commissioner on 18 August 2015 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Trust has correctly applied sections 40(2) and 41 of FOIA to the requested information.

Reason for decision

Section 41 – information provided in confidence

9. Section 41(1) of the FOIA says that information is exempt from disclosure if (a) it was provided to a public authority by another person and (b) disclosing it would be an 'actionable' breach of confidence (ie the aggrieved party would have the right to take the authority to court as a result of the disclosure). Although section 41 is an absolute exemption and is therefore not subject to a public interest test under the FOIA, the common law duty of confidence contains an inherent public interest test.

41(1)(a) - Was the information provided by another person?

10. The Trust has informed the Commissioner that the mortality and morbidity meeting minutes contain information from individuals' medical records and the opinions of various medical professionals involved in the care of individuals. Whilst the minutes themselves would have been produced by the Trust, the Commissioner is satisfied that the information contained within these minutes was provided by other people.

41(1)(b) – Would disclosing the information be an actionable breach of confidence by that or any other person?

11. When considering whether disclosing information would be a breach of confidence, the Commissioner takes into account whether:

- the information has the necessary quality of confidence
- the information was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

This follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd*¹

Does the information have the necessary quality of confidence?

12. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial. Information which is of importance to the confider should not be considered trivial.

13. Because this information is now being requested under the FOIA and no evidence to the contrary has been put before him, the Commissioner is satisfied that the information is not otherwise accessible to the public. He is also satisfied that the requested information is clearly not trivial in nature. This is because it concerns circumstances surrounding the deaths of patients and also the health and medical care of those patients and other patients who are still living. The Commissioner is therefore satisfied that the requested information does have the necessary quality of confidence.

Was the information imparted in circumstances importing an obligation of confidence?

14. As discussed above, the requested minutes of meetings concern the circumstances surrounding the medical care of particular individuals and the deaths of some of those individuals. The information contains

¹ [1968] FSR 415

the medical opinions of various professionals. It also contains information provided indirectly by the deceased individuals via their medical records and their previous consultation with health and social care professionals.

15. In the Commissioner's opinion when patients submit to treatment from doctors and other medical professionals, whether that is in surgeries, hospitals or other institutions, they do so with the expectation that the information will not be disclosed to third parties without their consent.
16. Therefore, the Commissioner is satisfied that an obligation of confidence is created by the very nature of the doctor/patient relationship and the duty is therefore implicit. This is further supported by the oath taken by doctors guaranteeing to protect doctor/patient confidentiality.
17. The Commissioner is also satisfied that the wider circumstances in which all the information held in the minutes of the meetings was imparted – the unexpected death of a number of individuals – imports an implicit duty of confidence and sensitivity to this information.

Would disclosing the information be an unauthorised use of the information to the detriment of the confider?

18. The Commissioner has considered this question in the context of the requested information. The loss of privacy can be a detriment in its own right. The Commissioner considers that health and social care records constitute information of a highly sensitive and personal nature. It is therefore not necessary for there to be any detriment to the confider in terms of tangible loss, for this information to be protected by the law of confidence. The Commissioner has therefore not considered this issue further.

Public interest in disclosure

19. The Commissioner has not been presented with any evidence to suggest that the public interest in disclosing these minutes is of such significance that it outweighs the considerable interest in maintaining the confidence of the health and social care information in question.
20. In conclusion, the Commissioner is therefore satisfied that the information held within the meeting minutes was provided by other people and that disclosing it would be a breach of confidence regarding which action could be taken by persons such as the patients

themselves, or the personal representatives of the deceased patients mentioned. This information is therefore exempt under section 41.

Section 40(2) of FOIA

21. As the Commissioner considers that section 41 of FOIA applies to the entirety of the requested information, he has not gone on to consider the Trust's application of section 40(2). However, he notes that the requested information contains the details of deceased persons, which would not constitute personal data as they do not relate to living individuals.

Right of appeal

22. 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

23. 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.
24. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF