

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2016

Public Authority: South East Coast Ambulance Service NHS Trust
Address: The Horseshoe
Banstead
Surrey
SM7 2AS

Decision (including any steps ordered)

1. The complainant has requested a list of public access defibrillation locations held by South East Coast Ambulance Service NHS Trust ("the Trust"). The Trust partially disclosed the list but withheld some of the locations on the basis of section 41.
2. The Commissioner's decision is that the Trust has failed to demonstrate the exemption is engaged in relation to the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the remaining locations of public access defibrillation sites
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 24 September 2015, the complainant wrote to the Trust and requested information in the following terms:

"I have been trying without luck for some time now to obtain a list of public access defib locations (PAD sites)."

Would you please be able to provide (ideally in excel format for ease of filtering) a complete list of all pad sites the Trust has on its records."

6. The Trust responded on 7 October 2015 providing a spreadsheet showing the current list of PAD sites which the Trust stated was incomplete as it only contained sites where permission had been given to share details. The complainant responded on the same day expressing his dissatisfaction with being provided with an incomplete list.
7. After some further emails the complainant wrote again to the Trust on 20 November to formally ask for an internal review of the Trust's decision on the basis that the request had not been answered in full and no exemptions had been cited as a basis for this.
8. Following an internal review the Trust wrote to the complainant on 23 December 2015. It stated that it had only provided the locations of PAD sites where it had received permission to do so and for those sites where permission had not been given the information was being withheld on the basis of section 41 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 4 January 2016 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine if the Trust has correctly withheld information on the basis of section 41 of the FOIA.

Reasons for decision

Section 41 – information provided in confidence

11. Section 41 applies to information obtained from a third party whose disclosure would constitute an actionable breach of confidence. This exemption is absolute and is therefore not subject to a public interest test.
12. Section 41(1) states:

"Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

13. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. In this case the information being withheld by the Trust is the locations of PAD sites where consent has not been provided to share this information. The Commissioner understands this information is obtained by the Trust via a Defibrillation Registration Form and it is therefore clear that this information is obtained from a third party and that the requirement of section 41(1)(a) is met.
14. As to whether disclosure would give rise to an actionable breach of confidence, the Commissioner's view is that a breach will be actionable if the following test is met:
 - The information has the necessary quality of confidence. (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.)
 - The information was communicated in circumstances importing an obligation of confidence. (An obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself, and/or the relationship between the parties.)
 - Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.
15. The withheld information in this case is the location of PAD sites. This information is significant as it is used by Emergency Operations Centres (EOCs) to inform paramedics about the nearest locations of defibrillators at the time of an emergency. Automated External Defibrillators (AEDs) can be located at private residences, public buildings such as leisure centres, nursing homes and other buildings.
16. The Trust has explained that when third parties supplied their information to the Trust using the registration form they are informed that the information will be held on its Computer Aided Dispatch System (CAD) for emergency use. The Trust argues there is therefore an implied duty of confidence as there is no indication the information will be used for other purposes or be made publicly available.
17. The Trust has advised the Commissioner that it is changing its registration form to include a specific statement asking for permission to

place information on the PAD site into the public domain and is already taking steps to write to existing owners to request their permission (where it has not already been given). The Commissioner does therefore accept that as the original registration forms contained no information on the potential publication of details or use of information apart from on the CAD system the information was imparted under an implied obligation of confidence.

18. As to the detriment resulting from disclosure, the Trust said that it believed in some circumstances the unauthorised disclosure of the location of PAD sites could be to the detriment of the occupants or owners of the property at a given location; for example where equipment is located at a private building and is intended for use of the occupants. However the Commissioner would argue that the nature of the defibrillators in this case is that they are intended to be publicly accessible in emergencies and therefore even if they are located in private premises there would still be an expectation that their location would be made available if necessary.
19. The complainant has explained to the Commissioner that AEDs are installed in the community in special cabinets and can be accessed in an emergency by any member of the public who will be given a code when dialling 999.
20. The Trust's arguments seem to be that where permission has not been given to share the location of these public defibrillation sites the information is held on the CAD system and used by EOCs to inform paramedics about the locations in an emergency. The complainant argues that any member of the public can obtain access to AEDs, and presumably the location of PADs when required.
21. The Resuscitation Council UK¹ offers advice on PADs and states:

"Public-access defibrillators are usually kept in cabinets in prominent public locations with appropriate signs to help people to find them and know what they are ... Some locked cabinets need a numerical code to unlock the door. The ambulance service will give this code to the person who makes the initial 999 call, once they have confirmed that they are dealing with a cardiac arrest."
22. This would support the view that the locations of PADs can be given to a member of the public in an emergency situation. The complainant

¹ <https://www.resus.org.uk/defibrillators/cabinets-for-public-access-defibrillators/>

argues that purpose of PADs is to make potentially life-saving equipment accessible to people as quickly as possible and that hiding the locations negates the purpose of having PADs.

23. The Commissioner has considered these arguments and in his view it is unclear how or why a person might suffer detriment as a result of disclosure. The Commissioner's view is that the purpose of the PADs is for them to be available to the public and anyone who has one on site would be aware of this. It is unclear how detriment could be suffered by anyone with a PAD site having this information publicly known and how if some sort of detriment did occur they would seek to commence legal proceedings against the Trust.
24. The fact that the Trust has taken steps to include a new statement on registration forms making it clear that information may be disclosed indicates that the Trust is aware this is the sort of information which should be accessible and the chance of disclosure causing detriment has been overstated.
25. Therefore without any further evidence from the Trust the Commissioner must find that this part of the test has not been met. In his view the Trust has failed to show how disclosure would cause detriment to the confider of the information and as such he has concluded that section 41 is not engaged.

Right of appeal

26. 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

27. 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.
28. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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