

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2017

Public Authority: South Tyneside NHS Foundation Trust
Address: South Tyneside District Hospital
Harton Lane
South Shields
Tyne & Wear NE34 0PL

Decision (including any steps ordered)

1. The complainant has requested information about the movement of units of blood. South Tyneside NHS Foundation Trust ('the Trust') has released some information and withheld some under section 40(2) of the FOIA as it considers this information to be the personal information of third persons.
2. The Commissioner's decision is that the withheld information is the personal data of third persons and the Trust is entitled to withhold it under section 40(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 14 July 2016, the complainant wrote to the Trust and requested information in the following terms:

"I repeat my request for information regarding the distribution of Blood from the fridge on the 9th and 10th Feb 2015. My area of interest are the 2 Units I received, as attached... I am entitled to this information under the Freedom of Information Act I believe."

5. The Trust responded on 15 July 2016. It released some information and withheld that which it said was the personal data of third persons, and so exempt from disclosure under section 40(2) of the FOIA.
6. Following an internal review the Trust wrote to the complainant on 1 August 2016. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 22 July 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the withheld information is the personal data of third persons and so exempt from disclosure under section 40(2) of the FOIA.

Reasons for decision

9. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the requester, and the conditions under either section 40(3)(a) or 40(4) are also satisfied.
10. The Commissioner has therefore first considered whether the information the Trust has withheld is the personal data of third parties.

Is the information personal data?

11. The Data Protection Act (DPA) says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.
12. The information withheld in this case is the names of particular members of staff, ie those individuals who were involved in the movement of the two units of blood from the point of their removal from the fridge on 9 February 2015. The Commissioner is satisfied that this data relates to living individuals and that the individuals can be identified from it. The Commissioner is therefore satisfied that the withheld information is the personal data of third persons.

Would disclosure breach one of the conditions under section 40(3)?

13. Section 40(3)(a) of the FOIA says that personal data of third persons is exempt from disclosure if disclosing it would contravene one of the data protection principles or would cause damage or distress and so breach section 10 of the DPA.
14. The Trust's position is that releasing the requested information to the complainant would contravene the first data protection principle as it would not be lawful or fair to the individual concerned.
15. In assessing fairness, the Commissioner considers whether the information relates to the data subject's public or private life; the data subject's reasonable expectations about what will happen to their personal data and whether the data subject has consented to their personal data being released.
16. Although the personal data in this case relates to the data subjects' public life, the Trust has told the Commissioner that some of these individuals are junior members of staff. This lessens further these individuals' expectation that their personal data would be released to the world at large under the FOIA. However, none of the individuals concerned would expect their personal data to be released and they do not appear to have consented to this.
17. The Trust says that, based on wider correspondence it has received from the complainant, it considers that the individuals concerned would be at risk from unwarranted distress if the complainant was to be able to identify them.
18. The Commissioner is satisfied that the Trust has correctly withheld the information the complainant has requested under section 40(2) of the FOIA. This is because it is the personal data of third persons and releasing the information under the FOIA would be unfair and so breach at least one of the conditions under section 40(3).
19. The Commissioner considers that disclosure would be unfair to the data subjects concerned because they have not consented to the release of their personal data, at least some are staff of a junior grade and the data subjects might reasonably expect that their personal data would not be released to the world at large. The Commissioner has also noted that the Trust considers that the data subjects may be at risk of distress if the requested information was released.
20. Despite the factors above, the requested information may still be disclosed if there is compelling public interest in doing so that would outweigh the legitimate interests of the data subject.

21. The Commissioner recognizes that the requested information is of particular interest to the complainant but disclosure under the FOIA is effectively disclosure to the world at large. In the absence of any compelling evidence to the contrary, the Commissioner does not consider that the information the complainant has requested is of such wider public interest that this outweighs the legitimate interests of the data subject.

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

Pamela Clements
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Wycliffe House
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SK9 5AF