

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2017

Public Authority: Dr Ian Reed
Address: AW Surgeries
Albion House
Albion Street
Brierley Hill
West Midlands DY5 3EE

Decision (including any steps ordered)

1. The complainant has requested information about particular policies and procedures. AW Surgeries has released some information and withheld some under section 40(2) of the FOIA because it considers it to be the personal data of third persons. The complainant considers that AW Surgeries holds additional, relevant information that it has not disclosed and has wrongly applied section 40(2) to the information it has withheld.
2. The Commissioner's decision is that:
 - On the balance of probabilities, AW Surgeries holds no further information within the scope of requests [1], [2] and [3] that it has not disclosed and it has therefore complied with its obligations under section 1(1) of the FOIA with respect to these requests.
 - On the balance of probabilities, AW Surgeries does not hold any information falling within the scope of request [4].
 - AW Surgeries holds further information falling within the scope of request [5] and has breached section 1(1)(a) because it confirmed to the complainant that it did not.

- AW Surgeries complied with section 10(1) as it complied with section 1(1) within 20 working days.
 - AW Surgeries correctly applied the exemption under section 40(2) to information it withheld with respect to requests [2] and [3] because it is the personal data of third persons and exempt from release under the FOIA. The additional information the Commissioner identified during her investigation that falls within the scope of request [5] is also exempt from release under section 40(2).
3. The Commissioner does not require the public authority to take any steps.
 4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. For ease and clarity, this notice refers to AW Surgeries where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

5. On 30 May 2016, the complainant wrote to AW Surgeries and requested information in the following terms:

"I am writing to make a formal request for all the information to which I am entitled under section 1 of the Freedom of Information Act 2000...

[1] All information generated as a response to my compliant about the practice, including internal correspondence, draft letters or practice generated information about my compliant. If this is deemed to be subject to an absolute or non-absolute exemption, please provide me with the details of the exemption used and its justification and if required the public interest test result. If you deem this information to be personal data as defined under the Data Protection Act 1998, (thus using section 40 exemption under the FOIA 2000) please provide this data under section 7 of the Data Protection Act 1998.

[2] A copy of the practice Policy/Protocol for handling aggressive or violent patients, including your zero tolerance policy, with any records demonstrating staff training for this process. Please include the practice policy or protocol for the removal of patients from the practice list.

[3] A copy of the practice confidentiality policy and agreements signed by practice staff, including staff contract terms that cover patient confidentiality and Data Protection, with any records demonstrating staff training for this process, as stated on page 4 of your response letter to my compliant dated 19th May 2016.

[4] A copy of the practice procedure for administration staff providing patients with results/ clinical information, with any records demonstrating staff training for this process, as stated on page 4 of your response letter to my compliant dated 19th May 2016.

[5] A copy of the practice procedure for managing complaints, with any records demonstrating staff training for this process, as stated on page 4 of your response letter to my compliant dated 19th May 2016."

6. AW Surgeries responded on 30 June 2016. With regard to request [1], AW Surgeries released relevant information but it is not clear under which information regime it was released: the FOIA, the Data Protection Act (DPA) or both.
7. With regard to the remaining four requests, AW Surgeries released a copy of its Zero Tolerance Policy in response to request [2]; a copy of its Confidentiality Procedure in response to request [3] and a copy of its Complaints Procedure in response to request [5]. With regard to request [4] AW Surgeries said it did not hold a written policy on reports.
8. Following intervention by the Commissioner, AW Surgeries undertook an internal review meeting on 5 October 2016 and provided the complainant with the result of its review in correspondence dated 4 November 2016.
9. With regard to request [1], AW Surgeries said that it does not hold any further relevant information that it has not disclosed.
10. With regard to request [2], AW Surgeries confirmed that it had released to the complainant its Zero Tolerance Policy. It considered the complainant's request for staff training records is exempt from release under section 40(2) and that it holds no further information within the scope of this request.
11. With regard to request [3], AW Surgeries confirmed it had released to the complainant its Confidentiality Procedure. It considered that copies of confidentiality agreements signed by staff were exempt from release

under section 40(2) and that it holds no further information within the scope of this request.

12. With regard to request [4], AW Surgeries confirmed that it holds no additional information within the scope of this request and that any associated staff training records are exempt from release under section 40(2), as for request [2].
13. With regard to request [5], AW Surgeries confirmed that it had released all the information it holds within the scope of this request ie its Complaints Procedure.

Scope of the case

14. The complainant initially contacted the Commissioner on 27 July 2016 as he was not satisfied with AW Surgeries response to his request. The complaint became eligible for consideration on 21 October 2016 and it was progressed once AW Surgeries had provided an internal review on 4 November 2016.
15. Provision of an internal review is not a requirement of the FOIA, but is a matter of good practice. The Commissioner recommends internal reviews are provided within 20 working days and no longer than 40 working days. AW Surgeries took longer than 40 working days to provide a review but this is not a breach of the FOIA.
16. The Commissioner's investigation has therefore focussed on AW Surgeries' compliance with section 1(1) of the FOIA, namely whether AW Surgeries holds any further information falling within the scope of the five requests. She has also considered whether AW Surgeries has correctly applied section 40(2) to the information withheld with regards to requests [2] and [3] and whether section 40(2) applies to any other information. Finally, the Commissioner has considered whether AW Surgeries complied with its obligation under section 10(1).

Reasons for decision

Section 1 – general right of access

17. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have the information communicated to him or her if it is held.

18. With regard to request [1], most of the information concerning the complainant's service complaint about AW Surgeries is likely to be the complainant's own personal data to which he is entitled under the DPA. An applicant's own personal data is exempt from release under the FOIA under section 40(1), because release under the FOIA is release to the wider world. Despite the complainant referring to the FOIA in the introduction to his requests, the Commissioner must assume that AW Surgeries understood that the correct regime to release any information relevant to request [1] is likely to be the DPA and that it was under the DPA that information was released. The Commissioner notes that the complainant also referred to the DPA within the body of this particular request.
19. However, the Commissioner accepts that some information within his complaint file may not be the complainant's personal data, but information of a more general nature. Such information *would* be covered by the FOIA.
20. AW Surgeries confirmed in its internal review that it does not hold any information within the scope of request 1 that has not been disclosed. In its submission to the Commissioner, AW Surgeries confirmed that it has provided the complainant with a copy of his records. As such, it confirmed it has disclosed to the complainant all the information it holds regarding his service complaint. It says it does not hold draft letters and does not store data locally on any computer. Furthermore, AW Surgeries says that all internal communication about the complainant's service complaint was verbal and there is no audit trail of emails – it says it is a small organisation with about 50 employees and does not have a large administration system.
21. On the balance of probabilities, the Commissioner is prepared to accept that, with regard to request [1], AW Surgeries has released all the relevant information it holds, and does not hold any further personal or more general information that it could release under either the DPA, or the FOIA.
22. With regard to request [2], AW Surgeries has released to the complainant a copy of its Zero Tolerance policy, which outlines how it will deal with patients who are verbally or physically abusive to members of its staff, and the template of an associated letter that would be sent to such patients. It has also indicated that it holds some staff training information with regard to this policy, and that this is exempt from disclosure under section 40(2). The complainant pointed out a clerical error in the policy document that AW Surgeries released, which it acknowledged in its internal review. The Commissioner understands that the complainant has been provided with an amended version.

23. In its submission to the Commissioner, AW Surgeries has referred to a template procedure for handling difficult patients that it received from Dudley Clinical Commissioning Group in February 2017. What concerns the Commissioner is the information AW Surgeries held at the time of the request; that is on 30 May 2016. AW Surgeries has not referred to any further searches it may have undertaken in order to confirm whether or not, on 30 May 2016, it held any further information falling within the scope of this request. In the Commissioner's view however, the released information and the withheld staff training information appears to satisfy the elements of request [2] and she is prepared to accept that AW Surgeries holds no further information within the scope of this request.
24. With regard to request [3], AW Surgeries has released to the complainant a copy of its Patient Confidentiality Policy and Agreement, which outlines how AW Surgeries' staff should manage the confidentiality of information about patients and AW Surgeries. The complainant pointed out clerical errors in the Policy document AW Surgeries released, which it acknowledged in its internal review.
25. AW Surgeries said it also held copies of signed staff confidentiality agreements and that this information was exempt from disclosure under section 40(2). The complainant considers that AW Surgeries holds information within the scope of this request that it has not disclosed, such as the number of staff who have received related training.
26. The Commissioner notes that the complainant broadly requested "*...any records demonstrating staff training for this process*" He did not specifically request information on the *number* of staff who have been trained.
27. AW Surgeries has told the Commissioner that the complainant has been provided with the Policy document and template agreement, and therefore has the blank template that every member of its staff has agreed to maintain. It holds versions of the agreements that staff have signed (and presumably information on staff contract terms and any related training that the complainant also requested) and has confirmed that it considers this information is exempt from disclosure under section 40(2).
28. AW Surgeries has not referred to any further searches it may have undertaken in order to confirm whether or not, on 30 May 2016, it held any further information falling within the scope of this particular request. In the Commissioner's view however, the released information and the withheld signed agreements, staff contracts and information on staff training on patient confidentiality appears to satisfy the elements of

request [3] and she is prepared to accept that AW Surgeries holds no further information within the scope of this request.

29. With regard to request [4], AW Surgeries told the complainant that it does not hold any specific information within the scope of this request.
30. AW Surgeries has told the Commissioner that the number of tasks a medical receptionist is required to carry out is "vast" and it takes over six months to train a new person. For the first month they shadow a senior member of the team, who gives them verbal instruction on each task they undertake. As AW Surgeries make changes to the tasks, it discusses this within practice meetings and any new procedural advice is held in related meeting minutes. Historically the induction was not documented; the senior person judged when to move on to the next stage. AW Surgeries had told the Commissioner that there is always a second member of staff with the new recruit for six months; initially in the foreground and then in the background, listening and observing. It says senior staff is on hand at all times for guidance.
31. The complainant appears to consider that AW Surgeries would hold staff training records. AW Surgeries has confirmed to the Commissioner that it does not hold any documented training records that are relevant to this specific request. Again, AW Surgeries has not referred to any searches it may have undertaken in order to confirm whether or not it held any information falling within the scope of this particular request, at the time of the request. Given its explanation above, however, the Commissioner is prepared to accept that it does not hold any information falling within the scope of request [4].
32. With regard to request [5], AW Surgeries has released to the complainant a copy of its Complaints Procedure, had clarified an aspect of this Procedure in its internal review, and had told the complainant that it holds no further information that it could disclose.
33. AW Surgeries has told the Commissioner that training on complaints is delivered via an e-learning program from Bluestream Academy. It has said that records are not held in paper format, that course content is the intellectual property of the Academy and that enquiries would need to be made via the Academy.
34. However, AW Surgeries says that it can access a schedule of those staff who have completed the course although it has also said that this information is 'on screen' and not printable. Through the 'PrintScreen' function, AW Surgeries could presumably transfer this schedule into, for example, a Word document that it could then print off. Arguably therefore, AW Surgeries *does* hold further information falling within the scope of this particular request and breached section 1(1) of the FOIA

when it confirmed to the complainant that it did not. But because this information concerns staff training records, the Commissioner has considered below whether this information is exempt from release under section 40(2).

Section 10(1) – time for compliance

35. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) as soon as possible and within 20 working days following the day of receipt. In this case, the complainant submitted his request, dated 30 May 2016, by post. AW Surgeries confirmed to the complainant that it received his request on 2 June 2016. A response was therefore due by 1 July 2016. AW Surgeries provided its response, dated 30 June 2016, by post. The Commissioner assumes this was delivered to the complainant on 1 July 2017. AW Surgeries appears to have therefore satisfied the 20 working day requirement.

Section 40(2) – third person personal data

36. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of a third person and the conditions under section 40(3) or 40(4) are also satisfied.
37. AW Surgeries says it holds staff training information that falls within the scope of requests [2] and [3], and the Commissioner has found that AW Surgeries also holds staff training information falling within the scope of request [5]. In addition AW Surgeries holds signed staff confidentiality agreements and, presumably, staff contracts with respect to request [3]. It considers this information is exempt from release under section 40(2) of the FOIA.
38. The Commissioner asked AW Surgeries a series of questions about its application of section 40(2) to the information it has withheld (nor did it provide the Commissioner with copies of the information, as asked). AW Surgeries did not address these questions in its submission. Its arguments in support of its application of this exemption are therefore weak.
39. With regard to these requests, AW Surgeries has said that the complainant's request to inspect all staff records is excessive and it cannot see any justification for disclosing this material to him. It also mentioned that the complainant had not provided it with any assurances of how he would handle this data and therefore it cannot disclose sensitive personal data to him. AW Surgeries confirmed that it has a duty to its staff to safeguard personal data and does not agree that names and signatures are disclosable under the FOIA.

40. Whether the request was 'excessive', justification for the request and how the complainant intended to use the information are largely immaterial. If AW Surgeries holds information that has been requested and if AW Surgeries considers the requested information is exempt from disclosure under section 40(2) because it is the personal data of third persons, it should be able to clearly explain why the exemption applies. Addressing the Commissioner's questions directly would have provided this clarification.

41. The Commissioner has nonetheless first considered whether the information in question is the personal data of third parties.

Is the information personal data?

42. 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.

43. The information withheld with regard to requests [2], [3] and [5] are staff training records. Further information withheld with regard to request [3] is signed staff confidentiality agreements and staff contracts. The Commissioner considers that this data would relate to living individuals and that the individuals could be identified from it. The Commissioner therefore considers that the withheld information would be the personal data of third persons.

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

44. 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.

45. In the absence of clarity from AW Surgeries, the Commissioner considers the most likely position here is that releasing the withheld information would contravene the first data protection principle as it would not be lawful or fair to the individuals concerned.

46. In assessing fairness, the Commissioner considers whether the information relates to the data subjects' public or private life; the data subjects' reasonable expectations about what will happen to their personal data and whether the data subjects have consented to their personal data being released.

47. The personal data in question relates to the data subjects' public life – their professional training records, contracts and signed confidentiality agreements. However the Commissioner considers that these individuals would have the reasonable expectation that their personal

data would not be released to the world at large under the FOIA. AW Surgeries has not confirmed whether or not the individuals concerned consented to their personal data being released. In the Commissioner's view, it is unlikely that they would.

48. The Commissioner considers that AW Surgeries has correctly withheld this information 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).
49. The Commissioner considers that disclosure would be unfair to the data subjects concerned because they are unlikely to have consented to the release of their personal data and might reasonably expect that their personal data would not be released to the world at large. The data subjects may well suffer a degree of distress if their personal data was to be released into the public domain.
50. 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 subjects.
51. The Commissioner recognizes that AW Surgeries' staff training records, contracts and signed staff confidentiality agreements are of 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 this information is of such wider public interest that it outweighs the legitimate interests of the data subjects. The Commissioner therefore considers that AW Surgeries is correct to withhold it. AW Surgeries has confirmed that members of its staff are appropriately trained in various areas and maintain confidentiality agreements. (She has noted that AW Surgeries has released a blank confidentiality agreement template to the complainant.) The Commissioner's view is that this assurance meets any public interest considerations concerning these particular requests.

Right of appeal

52. 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

53. 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.
54. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF