

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 January 2023

**Public Authority:** Care Quality Commission  
**Address:** Citygate  
Gallowgate  
Newcastle-upon-Tyne  
NE1 4PA

#### **Decision (including any steps ordered)**

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1. The complainant has requested the Care Quality Commission (CQC) to disclose information relating to Mental Health Act complaints and an inspection of an NHS Trust's Mental Health Services. The CQC refused to disclose the inspection information citing section 31(1)(g) by virtue of 31(2)(c) of FOIA (law enforcement), section 40, section 41 and section 44 of FOIA. For the complaints information the CQC refused to disclose on the basis of the same exemptions.
2. The Commissioner's decision is that the CQC is entitled to refuse to disclose the inspection information in accordance with section 31(1)(g), by virtue of 31(2)(c) of FOIA and for the complaints information the CQC is entitled to refuse the request on the basis of section 40(2). The CQC however breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt.

#### **Request and response**

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3. On 15 July 2022 the complainant made a request to the CQC for the following information:

"CQC Inspection of Airedale Centre for Mental Health including the Fern Ward between 10th and 11th December 2020.

This is a FOI request for all documents relating to the inspection of Bradford District Care NHS Foundation Trust Mental Health Services which led to the report published on 17 Feb 2021 entitled 'Bradford District Care NHS Foundation Trust Acute wards for adults of working age and psychiatric intensive care Units'.

Mental Health Complaints to the CQC 2020-21 This is a FOI request for databases and documents relating to mental health complaints to the CQC in 2020-21 (and if applicable 2019-20 as explained below. (full text not included here for brevity).

Copy of CQC Mental Health Act Complaints department's 'complaint handling procedure/guidance document''

4. The CQC responded on 12 October 2022 confirming information in scope of the request was held. For the first part of the request – documents relating to the inspection – the CQC stated the information was exempt under sections 31, 40, 41 and 44 of FOIA. For the second part of the request – databases and documents relating to complaints to the CQC – the public authority again stated the information was exempt under sections 31, 40, 41 and 44 but did provide an overview of mental health complaints broken down by chapters in the Code of Practice<sup>1</sup>. For the final part of the request – CQC's Mental Health Act Complaints department guidance document – the public authority stated no such document existed.
5. Following an internal review the CQC located the document referred to in the final part of the request and provided this to the complainant. It maintained its position in relation to the other parts of the request.

## **Reasons for decision**

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### **Section 31**

6. The Commissioner has first considered the CQC's application of section 31 to withhold all documents relating to the inspection of Bradford District Care NHS Trust Mental Health Services ("the Trust") that led to the report referred to in the request.
  7. The CQC has argued that disclosure of the requested information would be likely to prejudice its regulatory functions. The particular function it
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<sup>1</sup> [Code of practice: Mental Health Act 1983 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101222/code-of-practice-mental-health-act-1983.pdf)

has specified is its function of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise.

8. The Commissioner recognises that the public authority has regulatory functions which are capable of being prejudiced in the manner envisaged by this exemption.
9. As the regulator, the CQC's role is to obtain and assess evidence as to the compliance with the Health and Social Care Act 2008 and associated regulations, to assess and report on the quality and safety of care provided by registered providers, and to take actions where providers do not meet their legal obligations.
10. The CQC argues that disclosure of the requested information would circumvent CQC's quality assurance processes in relation to its inspections and assessments of registered providers. Information which is contained in inspection reports is subject to the factual accuracy and challenge process, by which registered providers are able to comment on draft findings before they are published and any regulatory action is finalised. Notes made by inspectors in the course of inspections are intended as an aide memoire for their personal use in reaching and recording their judgements. In doing so, inspectors also draw upon and consider a range of other documents, data and information obtained from the provider and from other sources to triangulate and corroborate their findings. Inspection notes are therefore not a full and accurate reflection of the CQC's regulatory findings. Where information in inspection notes is relevant, has been tested and corroborated, and where it is found to proportionately and accurately reflect the CQC's regulatory findings, the CQC will publish that information in the inspection report.
11. Furthermore, the inspection notes contain information relating to the CQC's observations of the care being delivered to people using the service at the time of the inspection. Even where people are not identifiable to third parties, the CQC considers disclosure of the information is likely to make people concerned about their care being observed by CQC Inspectors due to an increased concern about intrusiveness and confidentiality. As such, disclosing the notes into the public domain is likely to make it more difficult for the CQC to observe and inspect the delivery of care in future. This is because people who use the services it regulates will be reluctant to permit the CQC to do so due to concerns about their privacy and confidentiality.
12. Where the CQC interviews, talks to or communicates with any person to receive their views and experiences of a regulated service it states there is an expectation of confidentiality. People often feel reluctant or

concerned about coming forward to the CQC to share their experiences due to concerns about their confidentiality and privacy. Disclosure into the public domain under FOIA is likely to make the information available to the registered provider, their staff, and to other people who use or visit the service. Where those people are motivated and have existing knowledge, there is a significant risk that they could identify individuals. Even where identification does not occur, people who have shared information with the CQC are likely to feel concerned about the risk of identification. In the CQC's view, disclosure of the requested information under FOIA is therefore likely to discourage people from sharing their experiences of care with the CQC in the future.

13. The CQC also considers disclosure would be likely to undermine its relationships with registered providers. The Trust disclosed a large number of documents to the CQC and these documents constitute a significant proportion of the withheld information in this case. The documents are confidential in nature, and were passed to CQC in confidence, for the purpose of enabling CQC to carry out its regulatory functions.
14. While the CQC acknowledges it has statutory powers to require registered providers to disclose information which it considers necessary or expedient to obtain for the purposes of its regulatory functions, the effectiveness and efficiency of CQC's regulatory activity is greatly assisted when regulated providers are cooperative and proactive in sharing information with the regulator. It is argued that providers would be less forthcoming and proactive in sharing information and evidence with CQC, and the extent of information provided would be less comprehensive, were such information to be disclosed to the world by CQC.
15. In a recent decision notice IC-143310-Q7F6, the Commissioner set out why he considered that disclosing similar information would harm the public authority's ability to regulate effectively<sup>2</sup>. This decision related to the disclosure of inspection records from a recent inspection and the arguments were similar to those provided in this case. The Commissioner adopts the same reasons as are set out in paragraphs 14-24 of that decision notice to explain why section 31 is engaged in this instance. In brief, the Commissioner agrees that disclosure would be likely to prejudice the exercise of the CQC's regulatory functions. It

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<sup>2</sup> [ic-143310-q7f6.pdf \(ico.org.uk\)](#)

would be likely to discourage registered providers and other parties from sharing information.

16. For the above reasons the Commissioner is satisfied that regulation 31(1)(g) by virtue of 31(2)(c) is engaged.
17. In terms of the public interest test, clearly the CQC and the complainant disagree on where the public interest balance lies.
18. The CQC accepts disclosure would serve a public interest in openness and transparency and in increasing understanding of the CQC's inspection processes and the range of information that is obtained to reach regulatory judgements.
19. The complainant has advanced arguments as to why they have an interest in the information personally and in disclosure of information that may show that the CQC's assessment of the Trust is incorrect. The complainant, in particular, argues that the public have a right to know about the "serious incidents which gave the CQC concerns about the safety and quality of services provided". They stated:

"Therefore the general public, service users and their families and particularly those who had complained about the service provider, have the right to access all documents relating to this December 2020 inspection, to see how an "unannounced focused inspection [as a result] of some serious incidents which had taken place on the wards [which] gave [the CQC] concerns about the safety" translated into the inspection concluding that the service provider's "previous rating of good remains" and that the "service provided safe care" (CQC Dec 2020/Feb 2021: 2)."
20. The Commissioner recognises the public interest in transparency and accountability and in members of the public understanding more closely how the CQC carries out its regulatory functions. He accepts that there are clear public interest arguments in understanding how the concerns about the Trust have been considered to date and how the CQC reached the conclusion that no immediate regulatory action was required.
21. However, the Commissioner does not consider it is in the public interest to prejudice the CQC's regulatory functions. The CQC relies heavily on concerned individuals coming forward and in registered providers cooperating openly, candidly and voluntarily. If disclosure took place it would be likely to hinder these processes and therefore the CQC's ability to carry out its regulatory functions effectively and this is not in the wider interests of the public.
22. The CQC publishes inspection reports setting out in detail the matters inspected, the evidence considered and the judgement reached and the

consequences of disclosing the "raw" data behind the report are much more likely to have a prejudicial impact on the CQC than to assist the public's understanding of the inspection process.

23. For the above reasons, the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption in relation to the first part of the request. He has therefore not gone on to consider the use of the other exemptions cited in relation to this information.

#### **Section 40**

24. The second part of the request asked for "databases and documents relating to mental health complaints to the CQC in 2020-21".
25. In its internal review response the CQC stated it did not have a stand-alone 'Mental Health Act complaints database'. It explained when a complaint is received under the Mental Health Act, contact information of the complainant, summary information about the complaint and relevant attachments are saved on CQC's main record system (CRM) and classified as Mental Health Act complaints. The CQC is able to pull reports from CRM that list Mental Health Act complaints recorded on CRM and these reports contain data compiled from the main records held on CRM.
26. The complainant is of the view a database exists – the CQC has informed the Commissioner that it did have a stand-alone system but that this was replaced prior to the period covered by the request. The database is still referred to in some CQC documents and colloquially by some CQC employees but no database exists anymore and all Mental Health Act complaints records are held on the CRM system.
27. The CQC considered even if this information was pulled from its CRM and compiled it could identify individuals and would involve processing special category personal data.
28. The complainant has stated that the purpose of this part of the FOIA request was to check if their complaint(s) had been recorded properly in the database. They argued the CQC could heavily redact any sensitive elements in all other complaints recorded in the database so that no personal details or other potentially identifiable information would be disclosed, acknowledging this would result in a significant number of redactions.
29. The Commissioner considers that whilst the CQC may not hold the specific database the complainant is referring to, it does hold the information the complainant has described as wanting access to as its Mental Health Act complaints records are held on the CRM system. It is

possible for the CQC to extract this information into a report/spreadsheet.

30. That being said, the request asks for 'databases' relating to mental health complaints to the CQC in 2020/21 and it is clear that this will contain personal data. FOIA disclosures are made into the public domain and the Commissioner must consider whether there is a possibility of anyone being able to re-identify a complainant from the complaints information that is held and could be provided from the CRM.
31. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
32. The Commissioner considers that the individuals could be identified from the complaints data on the CRM as it contains details of the complaints made and could be linked to an individual by anyone with knowledge of the complaint. Redacting information and disclosing the remainder would render the disclosed information meaningless. Furthermore, the withheld information can be categorised as special category personal data.
33. Special category data is particularly sensitive and therefore warrants special protection. It can only be processed (which includes disclosure in response to an information request) if one of the stringent conditions under Article 9 of the UK General Data Protection Regulation (UK GDPR) are met.
34. In this case the relevant condition has not been met. The Commissioner has seen no evidence or indication that the data subject(s) has/have consented to the disclosure of the information or that the information has been made manifestly public by the data subject(s).
35. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this data would therefore contravene a data protection principle; that set out under Article 5(1)(a) of the UK GDPR. The information is therefore exempt under section 40(2) of the FOIA.
36. The Commissioner has therefore not gone on to consider the other exemptions applied to this information.

### **Procedural matters**

37. The CQC breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt.

Reference: IC-193752-Y3G3



## Right of appeal

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38. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**