

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2024

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested information about the cervical screening programme in relation to a specific laboratory. NHSE disclosed some information, confirmed it didn't hold other information and withheld the remainder under section 40(2) and 41 of FOIA. These exemptions concern personal data and information provided in confidence, respectively.
2. The Commissioner's decision is that the information NHSE is withholding is personal data that can be withheld under section 40(2) of FOIA.
3. It's not necessary for NHSE to take any steps.

Request and response

4. On 4 January 2023, the complainant made an information request to NHSE about the cervical screening programme in relation to a specific laboratory. This request is reproduced in an appendix to this notice. The Commissioner has redacted some geographic information from the request to reduce the likelihood of the complainant being identified.
5. In its response of 25 January 2023, NHSE addressed parts of the request, advised that it didn't hold some information and suggested the complainant contact the relevant NHS Foundation Trust for that. Finally,

NHSE applied section 40 to part of the request, which, with its associated table, the Commissioner has labelled '[1]'.

6. The complainant requested an internal review on 29 January 2023, which NHSE acknowledged on 1 February 2023.
7. On 31 January 2024, twelve months later, NHSE provided its internal review. It confirmed that it holds no further relevant information and maintained its reliance on section 40 of FOIA to withhold some information. At this point NHSE also applied section 41 to that information.
8. In their complaint to the Commissioner the complainant refined their request as follows:

"I am prepared to withdraw all of the requests I had originally made except for the information on the Positive Predictive Value and Abnormal Predictive Value of each member of staff, I don't need to identify ABMS [Advanced Biomedical Scientist Practitioner] or Consultant

In the section on is [sic] the information personal data I am not asking for any identifier whatsoever and I know there is no other published data that I could use to identify individuals."

9. The Commissioner put this to NHSE in correspondence dated 11 June 2024 and asked NHSE to consider it. In its submission to him, NHSE confirmed it's maintaining its reliance on section 40(2) and section 41 of FOIA to withhold the information, namely the Positive Predictive Value and Abnormal Predictive Value associated with each member of staff.

Reasons for decision

10. This reasoning covers whether NHSE has correctly applied section 40(2) or section 41 of FOIA, or both, to the information it's withholding.

Section 40 – personal data

11. Under section 40(2) of FOIA information is exempt from disclosure if it's the personal data of an individual other than the applicant and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In most cases the relevant condition is contained in section 40(3A)(a). This applies where disclosing the information to any member of the public would contravene any of the principles relating to the processing

of personal data ('the DP principles'), as set out in Article 5 of the UK GDPR.

13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it's not personal data, then section 40 of FOIA can't apply.
14. Second, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosing that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. NHSE considers that the withheld information is the personal data of members of staff who carried out the testing.
18. NHSE considers the information can be categorised as personal data because it 'relates to' each individual member of staff. This is because it shows the number of samples each individual has carried out, and the Positive Predictive Value (PPV) and Abnormal Predictive Value (APV) of those samples.
19. The PPV, NHSE has explained, is a measure of the accuracy of cytological prediction of CIN 2, CIN 3, adenocarcinoma in situ, CGIN or cervical cancer. A high PPV can indicate accurate prediction.
20. The APV is an indirect measure of the accuracy of these same metrics. A high APV can indicate inaccurate prediction. However, NHSE says, it's important that PPV and APV are considered together alongside other relevant factors.
21. NHSE has explained that PPVs and APVs are therefore associated with the performance of individual staff members. A very high PPV suggests good performance while a very high APV may indicate poor performance. NHSE says it's therefore satisfied that the information 'relates' to the staff members.
22. Although the requested information is numbers, NHSE considers that this information is personal data because the volume of tests which have

been carried out is indicative of the job role of the individual who carried out the test.

23. NHSE has also noted that the complainant has advised it that they're a former employee of the region to which the request relates. It's therefore mindful that they'll have access to information about the staff which isn't available to the general public. This increases the likelihood that the individuals become identifiable via the 'mosaic effect.' The mosaic effect refers to the piecing together of the requested information with other information that may already be in the public domain or known to the applicant or which a sufficiently motivated individual, including the applicant, could look for and find.
24. As an example, NHSE said that if the time period relevant to the request includes time during which the applicant was employed at the laboratory, it's reasonable to assume that they'll be aware of their own PPV and APV. They may also be aware of the PPV and APV of some colleagues who've chosen to share that information. This would significantly increase the likelihood of the complainant being able to identify the remaining staff members by a process of elimination.
25. In the circumstances of this case, the Commissioner is satisfied that the withheld information could be used to identify specific individuals – the 'data subjects.' He has taken account of the following factors:
 - In its internal review, NHSE noted that only a small number of people [fewer than 10] were in the roles in question; the complainant has asked for the roles to be broken down into ABSP and Pathologist; the information concerns a specific laboratory and a specific financial year – 2021/2022.
 - In its submission to the Commissioner, NHSE has said that the volume of tests each of the data subjects has carried indicates the professional role they have.
 - The complainant is a former employee who, if the information is associated with a period they were working at the site (and information they provided to NHSE suggests that it could), would be able to identify and eliminate themselves from the information. This would make it easier to identify the remaining data subjects.
 - Individuals currently working at the site could combine this information with information they already know, or could find out, to identify the data subjects.
26. The Commissioner is also satisfied that the information relates to the data subjects because it concerns their professional performance.

27. The withheld information therefore falls within the definition of 'personal data' in section 3(2) of the DPA. The Commissioner has gone on to consider the second element of the test, namely whether disclosing the personal data would contravene any of the data protection principles.

Would disclosure contravene a data protection principle?

28. The most relevant DP principle in this case is that under Article 5(1)(a) of the UK General Data Protection Regulation (GDPR), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

29. In the case of a FOIA request, the personal data is processed when it's disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
30. When he considers whether disclosing personal data would be lawful, the Commissioner considers the legitimate interest(s) in disclosure and whether disclosing the information is necessary to address those interests. If necessary, he then balances those legitimate interests against the data subject's interests, or rights and freedoms.
31. The Commissioner appreciates that the complainant has a legitimate interest in how a particular laboratory is performing and that interest could only be met by disclosing the specific information they've requested under FOIA. There's also a general interest in public authorities demonstrating that they're open and transparent.
32. In its submission to the Commissioner NHSE has recognised that the complainant has an interest in the information because of their background. However, it considers that the information is niche in nature and is extremely unlikely to be of any wider public interest. Even if the information were of public interest, NHSE says, it doesn't consider disclosure to be necessary.
33. This is because, as NHSE has noted, the complainant has set out in their correspondence to date that a range of performance information is already published via the Cervical Screening Programme¹ (latest report, 2022-23). NHSE is satisfied that the published information provides the public with an appropriate level of insight and understanding into how

¹ <https://digital.nhs.uk/data-and-information/publications/statistical/cervical-screening-annual/england-2022-2023>

Trusts are performing. Disclosing the information which NHSE has withheld wouldn't significantly advance public understanding of cervical screening performance.

34. In the preamble to their request, the complainant noted that they were formerly involved in the Cervical Screening Programme and maintained an interest in it, especially for the region in which they formerly worked.
35. The Commissioner agrees with NHSE that this is a very specific interest quite probably for the complainant only, or of very limited wider public interest. The wider public interest in the cervical screening programme and Trusts' performance is addressed to a satisfactory degree, in the Commissioner's view, through the information that's proactively published.
36. However, the Commissioner will accept that disclosure would be necessary to satisfy the complainant's legitimate interest.
37. The Commissioner has therefore balanced the data subjects' rights and freedoms against the complainant's legitimate interest, and he's determined that there's insufficient interest to outweigh the data subjects' fundamental rights and freedoms. The data subjects would reasonably expect that their personal data about their professional performance wouldn't be disclosed to the world at large under FOIA. Disclosing it would therefore cause them harm and distress. And, as the Commissioner's noted, the general interest in transparency is met through the relevant information that's proactively published.
38. The Commissioner therefore considers that disclosing the withheld information would be unlawful as it would contravene Article 5(1)(a) of the UK GDPR. As such, the Commissioner's decision is that NHSE was entitled to withhold the information under section 40(2) of FOIA. Since section 40(2) is engaged, it's not necessary for the Commissioner to consider NHSE's application of section 41 to the same information.

Procedural matters

39. Providing an internal review isn't a requirement of FOIA but is a matter of good practice. The Commissioner recommends that a public authority should provide its internal review within 20 working days of the request for one in most cases. In the most complex cases only, it should provide a review within 40 working days.

For monitoring purposes, the Commissioner has recorded the very significant delay in NHSE providing its internal review in this case.

Right of appeal

40. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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

APPENDIX

"...Please could you provide the following data for 2021-22.

Time from receipt of sample in the laboratory to authorisation of report for the primary HPV testing process, giving total samples reported broken down into:

	Total samples	0-2 weeks	3-4 weeks	5-6 weeks	7-8 weeks	9-10 weeks	Over 10 weeks
Unsatisfactory/Inadequate							
Negative primary HPV							
Positive primary HPV							

Time from receipt of sample in the laboratory to authorisation of report for samples reported following cytology screening, giving total samples reported broken down into:

	Total samples	0-2 weeks	3-4 weeks	5-6 weeks	7-8 weeks	9-10 weeks	Over 10 weeks
Unsatisfactory/Inadequate							
Negative							
Borderline Change/Mild Dyskaryosis							
Moderate Dyskaryosis or worse							

I would like to know what the staffing structure was in the [Redacted] successful bid compared to the actual staff in post on 1st April 2022. The number of individuals, and whole time equivalent (wte) staff for each of the staff groups:

[Redacted] tender/bid

	Total number of staff	Total wte
Primary Screeners		
Checkers		
Advanced BMS Practitioners (ABMSP)/ Consultant BMS		
Pathologists		

In post at [Redacted] laboratory 1st April 2022

	Total number of staff	Total wte
Primary Screeners		
Checkers		
Advanced BMS Practitioners/ Consultant BMS		
Pathologists		

Please detail any overtime payments, extra session payments or extra payments made to the [Redacted] laboratory to tackle backlogs in 2021-22.

I am also interested to see that the [Redacted] laboratory had a Positive Predictive Value (PPV) of 76.3% in 2020-21. This compares poorly with 2014-15 when the QE hospital had a PPV of 81.2% which at the time was the lowest PPV of all the laboratories in the NEYH region (with most labs being in the range of 85 to 90%). This appears to be a lowering of specificity with almost one in four women referred with high grade cytology having no correlation at colposcopy. Do individual staff have similar PPV statistics, and is there a correlation with workload?

[1] Please complete the following table for each ABMSP/Pathologist, anonymising individuals, please do not include double screened samples. The figures will need to be for the year 2020-21 as PPV and APV can only be calculated following colposcopy.

Number of samples reported/ PPV and APV 2020-21:

	Number of samples reported	Positive Predictive Value	Abnormal Predictive Value
ABMSP 1			
ABMSP 2			
ABMSP 3			
ABMSP 4			
ABMSP 5			
Pathologist 1			
Pathologist 2			
Pathologist 3			
Pathologist 4			
Pathologist 5			
Pathologist 6			

(Please add/ delete rows to accommodate all relevant staff.)

Please confirm if any samples were sent away to other laboratories for reporting.

On the national database the latest Cervical Screening QA: local visit report for the [Redacted] Health NHS Foundation Trust: cervical screening is dated 2nd August 2017. Please confirm if a more recent visit has occurred and when the report will be made public, or when a visit is planned.

The most recent Cervical Screening: Invasive cervical cancer audit was released on 24 October 2019 and covered the years 2013 to 2016. Please could you confirm if a further publication is due, and when this is expected to be published."