

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

### **Decision notice**

**Date:** 16 July 2018

**Public Authority:** South West Yorkshire Partnership  
NHS Foundation Trust

**Address:** Fieldhead  
Ouchthorpe Lane  
Wakefield  
WF1 3SP

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

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1. The complainant has requested information from South West Yorkshire Partnership NHS Foundation Trust ('the Trust') about redundancy packages. 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 data of third persons.
2. The Commissioner's decision is that:
  - The Trust correctly applied section 40(2) to the information it withheld.
3. The Commissioner does not require the Trust to take any steps to ensure compliance with the legislation.

## Request and response

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4. On 26 June 2017 the complainant wrote to the Trust and requested information in the following terms:  
  
*"1 – How many people have taken a redundancy package from the trust over the past 5 years (compulsory & voluntarily)*  
  
*2 – The names, job titles and bandings of the people who have taken a redundancy package over the past 5 years, and the amount that each individual received*  
  
*3 – The date that they finished*  
  
*4 – The location at which they worked prior to them taking their redundancy"*
5. The Trust responded on 4 September 2017 and released relevant information on a spreadsheet, with some of the information withheld.
6. In correspondence dated 11 September 2017 the Trust explained that names of individuals had been withheld as they were covered by the Data Protection Act. Job titles had also been withheld where these could lead to individuals being identified. The Trust released some information it had previously withheld – bands and locations – and corrected information regarding termination dates. The Trust confirmed to the complainant on 23 October 2017 that it had applied section 40(2) of the FOIA to the information it has withheld.

## Scope of the case

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7. The complainant contacted the Commissioner on 8 November 2017 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the Trust has correctly applied section 40(2) of the FOIA to the information it is withholding.

## Reasons for decision

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### Section 40 – personal data

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 applicant, and the conditions under either section 40(3) or 40(4) are also satisfied.

*Is the information the personal data of third persons?*

10. Data protection legislation says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.
11. The information the Trust has released is a spreadsheet with data under the following column headings: Job Title, Location, Band, Termination Date and Amount. From this spreadsheet the Trust has withheld some job titles and bands (the second element of the complainant's request) and certain locations (the fourth element).
12. In its submission to the Commissioner the Trust has explained that fewer than five individuals are associated with the particular job titles it has withheld. Releasing this information could therefore lead to those individuals being identified. With regard to locations, the Trust says it would be possible to combine this information with other information already in the public domain (such as has been released in response to this request) and so identify the individuals concerned. The Trust has withheld certain bands where these are not subject to the NHS Agenda for Change pay rates. As such, when combined with the other information that has been requested, it could be possible to identify particular former employees.
13. The above situation has been termed the 'mosaic argument'. This is often used to refer to the argument that whilst it may not be prejudicial to disclose requested information in isolation, it would be prejudicial where the requested information can be combined with other information already in the public domain or already known to the requester.
14. In addition, the 'motivated intruder' test appears to have some relevance here. The 'motivated intruder' test involves considering whether someone without any prior knowledge would be able to identify individuals through anonymized information, if motivated to attempt this. Such an individual might, for example, carry out a web search, search archives or use social networking in order to identify an individual from whose personal data, anonymized data has been derived.
15. In this case, since release under the FOIA is release to the wider world, potentially Trust employees could have additional corporate information, or have particular knowledge about staffing, that would, if they were

motivated to do so, enable them to identify particular individuals and their redundancy package if the disputed information was released.

16. Having considered all the circumstances, the Commissioner is satisfied that the withheld information could lead to individuals and their redundancy packages being identified. She is therefore satisfied that this information can be categorised as their personal data. The Commissioner has gone on to consider whether any of the conditions under section 40(3) or 40(4) of the FOIA have been satisfied.

*Is a condition under section 40(3) or 40(4) satisfied?*

17. The Data Protection Act 1998 (DPA) was in force at the time of the Trust's response. Under section 40(3)(a) of the FOIA disclosing personal data would contravene (i) any of the data protection principles or (ii) section 10 of the DPA (right to prevent processing likely to cause damage or distress).
18. The Trust's position is that disclosing the information in question would not be fair or lawful and would therefore contravene the first data protection principle.
19. In assessing fairness, the Commissioner considers whether the information relates to the public or private life of the individual; whether the individual has consented to their personal data being released, their reasonable expectations about what will happen to their personal data and the consequence of disclosure on the individual concerned.
20. The Trust's submission has not provided the Commissioner with a great deal of information on these points. It has, however, pointed out that, given that the individuals concerned have left the Trust it has not contacted those individuals to seek their consent for the release of their personal data. And clearly, the information relates to those individuals' professional life. The Commissioner next reviewed the information that has been withheld and notes that it concerns individuals who were in roles banded between Band 1 and Band 8, with Band 8 being the higher band.
21. The Commissioner is satisfied that individuals in Band 1 to Band 7 – ie the more 'junior' roles – would be justified in expecting that their personal data would not be released to the wider world. The Commissioner considers that Band 8 roles, of which there are a number amongst the withheld information, while somewhat more senior are not so senior that individuals in those roles might expect details of their remuneration to be made public. With regard to those individuals' expectations therefore, the Commissioner considers that it is very likely that they would have the reasonable expectation that details of their

redundancy packages would not be disclosed to the world at large under the FOIA. Releasing this information would therefore be likely to cause those individuals a degree of distress.

22. Despite the above, the withheld information may still be disclosed if there is a compelling public interest in doing so that outweighs the legitimate interests of the data subjects; that is, the individuals concerned in this case.
23. In his correspondence to the Commissioner dated 30 October 2017, the complainant has argued that the Trust should be transparent. He also referred to the Trust's published Annual Report and Accounts in which he says names, titles and job descriptions of senior staff are available for anyone to view, along with their salaries and pension details. The complainant provided a copy of this information from the Annual Report. The Commissioner has not considered this point further as this information is not the information that the complainant has requested.
24. In addition however, the complainant has noted that in the Annual Report, under the heading '*Payments for loss of office*' a particular job title and the amount paid to this person is given. The complainant says that this job description was withheld from the information that the Trust released despite this information being available in the Annual Report. A copy of this paragraph is included in the complainant's 30 October 2017 correspondence to the Commissioner.
25. The Commissioner has reviewed this Report, which she has identified as being the Trust's 2016/2017 Annual Report. With regards to the paragraph titled '*Payments for loss of office*', this says that a redundancy payment of £160,000 was made to the Director of Health Innovation and Intelligence in 2016/2017.
26. However, the Commissioner notes that the complainant submitted his request to the Trust on 26 June 2017. Given that it is currently stated on the Trust's website that the 2017/2018 Annual Report will be published 'later in the summer', the Commissioner considered that it would have been unlikely that the 2016/2017 Annual Report had been published in June 2017. The Commissioner notes that the complainant did not refer the 2016/2017 Annual Report and any information published in it in his original request to the Trust or in his request for an internal review.
27. The Commissioner queried this point with the Trust. The Trust advised that the 2016/2017 Annual Report was laid before Parliament on 6 July 2017 and that it is not allowed to publish these reports until they are laid before Parliament. The Commissioner considers it extremely unlikely that the information to which the complainant has referred was

publicly available at the time he submitted his request. *If* an individual had an expectation that their personal data would be released, the Commissioner considers that the expectation would be that it would only be disclosed within the context of the annual report, initially, and only then after the report had been published in line with established procedures ie being laid before Parliament.

28. Irrespective of what may have been published subsequently, the Commissioner's view is that, at the time of the request in June 2017, it was not fair to release the withheld information under the FOIA: the individuals concerned would have the reasonable expectation that their personal data would not to be released in response to an FOIA request and the complainant has supplied no strong public interest arguments for disclosure that would override those individuals' rights and freedoms. Disclosing the information would therefore contravene the first data protection principle and a condition under section 40(3) has been met.
29. The Commissioner is satisfied that the Trust was correct to withhold the disputed information under section 40(2). It is the personal data of third persons and a condition under section 40(3) is satisfied because releasing it would breach the first data protection principle. Because a condition under section 40(3) has been met, it has not been necessary to consider the condition under section 40(4).

## **Right of appeal**

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30. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

31. 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.
32. 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**