

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2018

Public Authority: South West Lincolnshire
Clinical Commissioning Group

Address: Bridge House
The Point
Lions Way
Sleaford NG34 8GG

Decision (including any steps ordered)

1. The complainant has requested the email addresses of the Board of Governors of South West Lincolnshire Clinical Commissioning Group ('CCG'). The CCG has withheld this information under section 40(2) of the FOIA as it considers it to be the personal data of third persons.
2. The Commissioner's decision is as follows:
 - The CCG is correct to withhold the requested information under section 40(2) of the FOIA.
3. The Commissioner does not require the CCG to take any steps to ensure compliance with the legislation.

Request and response

4. On 7 February 2018 the complainant wrote to the CCG and requested information in the following terms:

"I request that I be sent the email addresses of each of the Members of the Board of Governors."

5. The CCG responded on 8 March 2018. It summarised its recent correspondence and contact with the complainant. In February 2018 the complainant had declined a meeting with a Lay Member of the Patient and Public Involvement Governing Body. Also in February 2018, the Chief Operating Officer had suggested dealing with the complainant's substantive concerns outside of the FOIA. The complainant's emailed response had included an attached letter that he had asked to be sent to each member of the CCG's Board of Governors. The Chief Operating Officer subsequently confirmed that this had been done on 1 March 2018. The CCG went on to confirm in its response to his FOI request that it was withholding the information the complainant has requested under section 40(2) of the FOIA. It said that some members of the Board of Governors (such as the Lay Members) use their personal email addresses. The CCG advised the complainant of the other communication routes through which he could contact the Board of Governors.
6. In his request for an internal review, the complainant said *"On no occasion did I request Private Information regarding the Board of Governors."*
7. The CCG provided a review on 4 April 2018 in which it maintained its original position. It explained why it was relying on section 40(2). It also advised that profiles of the Board of Governors are published on its website¹ and again noted the other communication routes through which the complainant could communicate with the Board.

Scope of the case

8. The complainant contacted the Commissioner on 30 April 2018 to complain about the way his request for information had been handled.
9. In wider correspondence to the Commissioner the complainant says that the CCG 'implied' that he had asked for private email addresses to be published on the CCG's website. He disputes this is the case.

¹ <http://southwestlincolnshireccg.nhs.uk/about-us/our-governing-body>

10. The Commissioner's investigation has focussed on whether the CCG can rely on section 40(2) of the FOIA to withhold the information the complainant requested on 7 February 2018.
11. The CCG has advised the Commissioner that on 9 March 2018 the complainant submitted a separate request for the Board of Governors' **'official email addresses'**, to which the CCG provided a response on 20 March 2018. That request and response is not the subject of, or included in, this current investigation; however this investigation does consider the matter of the Board of Governors' official email addresses.

Reasons for decision

Section 40 – personal data

12. 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 a condition under either section 40(3) or 40(4) is also satisfied. The Commissioner has therefore first considered whether the information in question can be categorised as personal data.

Is the information the personal data of third persons?

13. The Data Protection Act 1998, which was still in force at the time of the CCG's response to the complainant, says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.
14. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
15. The withheld information in this case comprises the email addresses of the individual members of the CCG's Board of Governors. The Commissioner is satisfied that the individuals could be identified from their email addresses and that, consequently, the requested information is personal data.

Is a condition under section 40(3) met?

16. The condition under section 40(3)(a) of the FOIA is that disclosing the information would contravene any of the data protection principles. The CCG has indicated in its submission to the Commissioner that disclosure

would contravene the first data protection principle because it would not be fair to do so.

17. In assessing fairness, the Commissioner considers whether the individuals concerned have consented to their personal data being released, whether the information relates to the individuals' personal or professional life and what their reasonable expectations would be about what would happen to their personal data.
18. The Commissioner has noted that the Board of Governors comprises GPs, the Chief Nurse, Lay Members and other officers and representatives of relevant bodies. She notes that the requested information relates to these individuals' professional life but that some of the individuals had been using their personal email addresses to conduct official Board of Governors business.
19. The Commissioner is satisfied that those members using their own personal email addresses would have the reasonable expectation that this information would not be disclosed to the public at large through the FOIA.
20. The CCG has explained that it has a formal route through which the public can contact the Board of Governors. As well as publishing profiles of each Board member on its website, it says that on the 'Contact Us' page of its website it publishes the Board's email address, postal address and telephone number. The Commissioner has viewed this page and she does not consider that the CCG has made it clear to members of the public that it is through the CCG's *generic* postal address (which, the Commissioner notes, is different from the postal address it provided to the complainant), email address and telephone number that they can contact the Board of Governors specifically. That said, she notes that the CCG has confirmed that it manages communication with the Board of Governors through one, centralised route.
21. For this reason the Commissioner is satisfied that the remaining members of the Board would have the reasonable expectation that their email addresses, even if they are official email addresses, would not be released to the public at large through the FOIA. She does not consider that any member of the Board of Governors has a level of seniority at which they might reasonably expect their email address *would* be published
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 members of the Board of Governors in this case.

23. The withheld information may be of interest to the complainant but he has not presented the Commissioner with arguments to support a position that the individual email addresses of members of the CCG's Board of Governors has any wider public interest.
24. In its submission to the Commissioner meanwhile, the CCG has explained that it manages communication with the Board centrally in order to maintain an official route into the organisation. Through this route issues/matters can be dealt with in a structured manner without impacting on lay members and preventing them, and presumably the non-lay members also - from being able to do their day to day work. It considers that managing communications centrally is more effective and efficient.
25. The Commissioner has considered the circumstances of this case. She is satisfied that it would not be fair to release the requested information and that there are no strong public interest argument that override the Board members' rights and freedoms. Disclosing the information would therefore contravene the first data protection principle and a condition under section 40(3) has been met.
26. The Commissioner finds that the CCG 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).
27. It may be the case that the complainant did not expressly ask for the information he has requested to be published on the CCG's website. However releasing information in response to an FOIA request is effectively releasing it to the wider world. As is its usual practice, the CCG would have published its response to this FOIA request through the 'FOI Disclosure Log' on its website. If it had released the requested information – official email addresses and personal email addresses - this too would have been published on the website.

Other matters

28. The CCG has advised the Commissioner that it has now stopped Lay Members of its Board of Governors from using their personal email addresses and has provided them with official email addresses. The CCG has recognised that the use of personal email addresses for official business is not good practice from information governance or security perspectives.

29. The Commissioner hopes that the CCG considers her observation on how information is presented on its website and clarifies the contact information that is presented there, as appropriate.

Right of appeal

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

Website: 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
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