

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2019

Public Authority: Local Government and Social Care Ombudsman
Address: PO Box 4771
Coventry
CV4 0EH

Decision (including any steps ordered)

1. The complainant has requested information on the number of cases involving the death of a hospital in-patient which the Local Government and Social Care Ombudsman (LGSCO) had investigated in total, together with the number of such cases that the two named officers had investigated. The LGSCO refused the request for the total figure under section 12 – cost of compliance would exceed the appropriate limit, and the requests for number of cases investigated by the two officers were refused under section 40(2) – personal information.
2. The Commissioner's decision is that the LGSCO is entitled to refuse the first part of the request under section 12. However the Commissioner is not satisfied that the LGSCO has complied with its duty under section 16 to consider what, if any, advice and assistance it can provide the complainant to enable him to refine his request so that it can be dealt within the appropriate limit. In respect of the requests for the number of cases investigated by each of the named officers, the Commissioner finds that the LGSCO is entitled to refuse these requests under section 40(2).
3. In relation to section 16 of the FOIA, the Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Consider what, if any, advice and assistance it could provide the complainant to allow him to formulate a request which can be answered within the appropriate limit and to inform the complainant of the outcome of that consideration.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 7 December 2018 the complainant wrote to LGSCO regarding complaints about in-patient hospital deaths and requested information of the following description:

“(1) How many hospital in-patient death complaints have the LGSCO investigated;

(2) How many hospital in-patient death complaints has [named officer A] (LGSCO case handler) investigated;

(3) How many hospital in-patient death complaints has [named officer B] (LGSCO supervisor) managed and/or investigated. Can you please acknowledge the above FOIA request. I look forward to receiving the information within the stipulated timeframe.”

6. On 7 January 2019 LGSCO responded. It refused to provide the requested information. It cited section 12 (cost of compliance exceeds the appropriate limit) as its basis for refusing the information sought in part 1 of the request and section 40(2) (personal information) as its basis for refusing the information on the two named officers.
7. The complainant requested an internal review on 29 January 2019. The LGSCO concluded its internal review on 13 February 2019; it upheld its original decision.

Scope of the case

8. The complainant originally contacted the Commissioner on 11 January 2019 to complain about the way his request for information had been handled. However his complaint only became eligible for investigation following the conclusion of the LGSCO's internal review.
9. The complainant stressed the seriousness of investigations into the circumstances surrounding the death of a hospital in-patient. He therefore considered it in the public interest to know what experience the LGSCO as a whole, together with the experience its individual members of staff, had of investigating such matters.

10. The Commissioner considers that the matters to be decided is whether the LGSCO is entitled to withhold the information sought by part 1 of the request under section 12 and whether it is entitled to withhold the information requested in parts 2 and 3 under section 40(2).
11. The Commissioner will start by looking at the application of section 12 to this first part of the request.

Reasons for decision

Section 12 – appropriate limit

12. Before dealing with the LGSCO's application of section 12 the Commissioner has the following observations to make in respect of the interpretation of the request.
13. At the time of the request the LGSCO had not compiled the statistics for the number of complaints it had investigated about the deaths of hospital in-patients, i.e. the LGSCO did not hold this information as a specific piece of recorded information. This is not disputed. The LGSCO does however hold the individual case files within which are the details necessary to identify the cases which did involve the death of a hospital in-patient. The Commissioner considers that where a public authority holds the raw data, or the 'building blocks', for a set of statistics, it will be deemed to hold the requested information, but only to the extent that it can produce the statistics through the simple process of examining the raw data and compiling the requested information. Therefore if it is a simple case of looking at each case, determining that it related to a hospital in-patient death and counting up the number of such cases, the requested information would be held. However if the public authority has to exercise a degree of judgement in order to determine whether a case is captured by the request, the Commissioner considers the information would not be held. The rationale for this approach is explained in the Commissioner's published guidance on the FOIA, 'Determining whether information is held'.
14. The LGSCO's role is primarily to deal with complaints about local authorities and adult social service providers. The Parliamentary and Health Service Ombudsman (PHSO) deals with complaints about NHS bodies in England and government departments. A patient's treatment may involve input from both a NHS hospital and a local authority's social services. Complaints about the treatment such a patient has received may therefore be relevant to both the LGSCO and the PHSO. These cases are handled by a 'Joint Working Team' comprising of officers from both organisations. There is a great range of issues raised by such complaints. Many cases, possibly the majority, may not involve the death of a patient. Even where the patient died, the focus of the

complaint may not relate directly to what caused that death. If the request was interpreted as seeking statistics on only those cases where the subject of complaint was a direct factor in the death of a patient, it is likely that an investigator from the LGSCO would have to examine each case and exercise a professional judgement on its relevance to the request. In such circumstances, where such a level of judgement is required, there is a strong argument that the requested information is not held.

15. Therefore the LGSCO took a pragmatic approach to the interpretation of the request. It has been interpreted as seeking information on any complaint in which the person receiving the treatment being complained about, died whilst in hospital.
16. Section 12(1) of the FOIA states that a public authority is not required to comply with a request for information if the public authority estimates that the cost of doing so would exceed the appropriate limit.
17. The appropriate limit is a cost limit established by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No 3244, commonly known as the Fees Regulations. For public authorities such as LGSCO the appropriate limit is set at £450. Where costs relate to staff time, a public authority is only allowed to estimate the cost based on a charge of £25 per hour. Therefore an appropriate limit of £450 equates to 18 hours of staff time.
18. Furthermore a public authority is limited in respect of what activities it can take into account when estimating whether the appropriate limit would be exceeded. Under regulation 4(3) of the Fees Regulations a public authority is only allowed to take account of the following activities:
 - determining whether the information is held,
 - locating the information, or a document containing it,
 - retrieving information, or a document containing it, and
 - extracting the information from a document.
19. The LGSCO accepts that it holds the requested information, based on its interpretation of the request as set out in paragraph 15. To comply with the request it would need to search the information held in its electronic case management system. The system does have a search function, but it is limited. Searches can be conducted using criteria such as the first or last name of, what the LGSCO refer to as, the 'person affected', their post code, the status of the case (open or closed), some limited details relating to the final decision. It should be noted that this is not an exhaustive list. Having considered the standard search criteria provided

by the case management system, the Commissioner is satisfied that none of them relate specifically to cases which involved a 'hospital in-patient death'. However there is a facility to search cases by 'category'. One of those categories is 'health'.

20. The cases falling within the 'health' category are those investigated by the 'Joint Working Team i.e. the team comprised of staff from both the LGSCO and the PHSO. The Joint Working Team was established in 2015 to deal with such cases efficiently. The cases handled by this team are held on the LGSCO's case management system. The LGSCO is satisfied that any case which involved a hospital in-patient death would be one handled by this team and would fall within the 'health' category.
21. To identify just those cases within the 'health' category dealt with since 2015 the LGSCO would need to produce a list of all health cases and then look at the information on each individual case file in order to determine whether the case involved a hospital in-patient death.
22. The standard search facilities available in the case management system is only able to return a maximum of 500 cases. The LGSCO knows that there are more than 500 health cases held in the system. This was established by carrying out a quick search of the decisions published on its website. These decisions can also be searched by category and a search under the 'health' category returned over 500 cases. The Commissioner has conducted her own search of the website and is satisfied that over 500 cases fall within this category. The LGSCO explained to the Commissioner that a search of its website would not produce a complete list as not all decisions are published; for example where the details of the case would inevitably lead to the identification of the individuals involved. Therefore to produce a complete list of health cases the LGSCO would need to rely on its case management system.
23. As the case management system's standard search function is limited to 500 results, the LGSCO would need to create a bespoke report to produce a complete list of cases. The administrative work in requesting such a report would take about ½ a hour and to then write and run the report would take a further 1 ½ hours.
24. Once a list of all the health cases had been produced it would be necessary to look at each case to determine whether it involved a hospital in-patient death.
25. The LGSCO has described how it would intend to do this through a series of sifts. This would involve first looking at the 'initial information' on the file. The level of detail contained in the initial information varies. The Commissioner understands that the majority of health cases are referred to the joint working team by the PHSO and where this has happened the

initial information may simply state the case was a “PHSO referral”, or something similar. The remaining cases would have been set up by the LGSCO’s own ‘intake’ team, either by taking details of the complaint over the phone, or from correspondence. Where the complaint is received by letter the level of detail in the ‘initial information’ would again be limited. From discussions the Commissioner has had with the LGSCO she understands that it is likely that in the majority of cases (say 70%) there would be insufficient detail contained in the initial information to determine whether it concerned a hospital in-patient death. Therefore a second sift would be needed.

26. The second sift would involve examining some of the case papers on the file. The range of case papers and details contained in those documents will again vary. They may include an initial letter from the person submitting the complaint, other documents submitted by that individual in support of their complaint and where the complaint was referred by the PHSO any forms completed by that organisation.
27. Having conducted a sampling exercises of five health cases the LGSCO found that there were occasions when even the second sift failed to identify whether a case related to a hospital in-patient death. Therefore a third sift would be required.
28. The third sift involved examining any final ‘decision statement’. The Commissioner understands these would only be available where an investigation had been concluded.
29. Based on its sampling exercise the LGSCO estimates that the initial sift would take 10 minutes per case. Therefore even working on the bare minimum of 500 health cases that can be listed using the standard search facility, it would take:

$$500 \times 10 \text{ minutes} = 5,000 \text{ minutes}/60 = 83 \text{ hours}$$

Where necessary the second sift would take a further 10 minutes to complete. Therefore, assuming 70% of those cases would require a second sift, it would take a further:

$$500 \times 70\% = 350 \times 10 \text{ minutes} = 3,500 \text{ minutes}/60 = 58 \text{ hours}$$

30. Clearly these two sifts alone would greatly exceed the appropriate limit without factoring in the potential for a third sift, or taking account of the 2 hours it would take to request, write and then run the report required to produce a full list of health cases in the first place.
31. Having considered the LGSCO’s estimates the Commissioner considers it entirely plausible that the producing of the full list of health cases would take 2 hours work, nor does it seem unreasonable that the second sift, involving the reading of case papers, could take several minutes per

case. The Commissioner was more sceptical however that the first sift, using the initial information, would take an average of 10 minutes. This is based on the Commissioner's understanding that in the majority of cases only very limited details are recorded as 'initial information'.

32. As a consequence the Commissioner asked the LGSCO to provide copies of the information it had considered in its original sampling exercise. As it had not kept a record of the actual cases included in that sampling exercise the LGSCO undertook a second one. The Commissioner understands that when doing so it quickly established that the person affected in the first two health cases it looked at were alive and therefore could not have concerned a hospital in-patient death. The LGSCO therefore looked at another five cases where this could not be so easily established. All five cases had been referred to the Joint Working Team by the PHSO and it did not prove possible to determine whether the case was relevant from the 'initial information'. The LGSCO therefore went onto the second sift, but found that in all five cases the file had been managed so that only the decision correspondence was held. As a consequence the LGSCO relied on the decision statements to establish whether the case had involved a hospital in-patient death. Those five decision statements took a total of 37 minutes to read. That is an average of 7.4 minutes per statement.
33. Based on that sampling exercise, it could be argued that it would take 61 hours to go through 500 cases. However the Commissioner considers account should be taken of the 2 cases initially considered by the LGSCO when conducting the sampling exercise, i.e. those cases where it was quickly established that they were not relevant to the request. Therefore the sample consisted of 7 cases. This reduces the time taken to 37 minutes/7 = 5.3 minutes per case. If this is applied to 500 cases the time taken to identify those cases that involved a hospital in-patient death would be:

$$500 \times 5.3 = 2650 \text{ minutes} / 60 = 44 \text{ hours.}$$

34. The Commissioner has viewed the decision statements included in the sampling exercise. Having considered those statements the Commissioner considers that the figure of 37 minutes to read the statements could be a slight over estimation. However, the Commissioner has not found that this provides grounds for thinking the request could be complied with within the appropriate limit. Even if the time taken to read each statement was halved (which the Commissioner is not satisfied would be a realistic figure) the time taken would still be 22 hours; which exceeds the appropriate limit by 4 hours.
35. In addition to this figure, the 2 hours required to request, write and run the report needed to produce a full list of all the health cases has to be taken into account.

36. Furthermore it should be remembered that the estimates set out above is based on a search of only 500 health cases. The Commissioner is satisfied that there are more.
37. Nevertheless, it is clear from these calculations that if the LGSCO only needed to scrutinise the decision statement for each health case, the time it would take to identify those involving a hospital in-patient death would be greatly reduced. However such statements are only produced at the conclusion of an investigation. Therefore where a health case was still open and under investigation, more laborious searches involving multiple sifts would still be required. Although it has not provided a figure, the LGSCO has explained that health cases do take longer than other cases to complete and therefore a greater proportion of the health cases held in the case management system would be open compared to those in other categories.
38. In light of the above the Commissioner is satisfied that the LGSCO could not comply with the request within the appropriate limit. The LGSCO is entitled to rely on section 12 to refuse part 1 of the request

Section 16 advice and assistance

39. Section 16 places a duty on a public authority to provide advice and assistance to an individual who proposes to make a request, or who has made request, so far as it would be reasonable to expect that public authority to do so. Where a public authority has refused a request under section 12 this duty to provide advice and assistance extends to considering what, if any, advice the public authority could offer the applicant in respect of how they may refine their request in order to bring it below the appropriate limit.
40. The LGSCO has suggested to the Commissioner that it could consider whether information could be provided based on a subcategory of the health cases. Its case management system contains a number of subcategories below the broad category of 'health'. One of these is 'hospital acute services, in patient'. Given the nature of these cases, it is likely that there would be a higher proportion of these which involved a patient's death whilst in hospital. However it should be noted that this sub category would not capture all such cases, which is why the LGSCO did not consider it appropriate to limit its searches to just this sub-category when dealing with the request initially. But it would be something for the complainant to consider.
41. The LGSCO has advised the Commissioner that there are 125 complaints in the 'hospital acute services, in patient' subcategory. It therefore seems that there is some potential to scrutinise at least some of these cases to identify those which involved hospital in-patient deaths. How many of those cases, or over what time period cases, could be

scrutinised would depend, in part, on the accuracy of LGSCO's sampling exercise. It may therefore be necessary for the LGSCO to carry out a further exercise using a larger sample. Furthermore, as it has become apparent that it is likely to take longer to scrutinise open cases than simply look at the decision statements on closed cases, the proportion of cases in the subcategory that are still open will therefore have a bearing on how many, or over what period, cases can be searched.

42. The Commissioner notes that even if it was possible to provide some statistics based on this sub-category, they would not necessarily be representative of how many hospital in-patient death cases the LGSCO had considered in total over that period. Therefore the Commissioner considers that the LGSCO should clarify with the complainant whether statistics based on just the cases within the 'hospital acute services, in patient' sub-category would be of any interest to him. If it is, the LGSCO should consider what searches of that subcategory could be conducted within the appropriate limit. If statistics based on that subset are not of interest to the complainant, the LGSCO should consider whether there is any meaningful advice and assistance it could offer in respect of refining a request of the higher level, 'health' category.
43. In summary, the Commissioner finds that the LGSCO should consider what advice and assistance it is able to provide to the complainant with a view to enabling him to make a refined request.

Section 40(2) – personal information

44. This exemption has been applied to both parts 2 and 3 of the request which seek information on the number of cases about hospital in-patient deaths that named members of staff had investigated.
45. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
46. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of 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 General Data Protection Regulation ('GDPR').
47. 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 is not personal data then section 40 of the FOIA cannot apply.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

48. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

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

50. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
51. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
52. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
53. Parts 2 and 3 specifically focus on the number of complaints involving hospital in-patient deaths that the two officers named in the request had dealt with. As such the requested information could not be disclosed without revealing something of the nature of the work that had been conducted by those two named individuals.
54. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to those two individuals. She is satisfied that this information both relates to and identifies the officers concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
55. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
56. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

57. Article 5(1)(a) of the GDPR states that:

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

58. In the case of an FOIA request, the personal data is processed when it is 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.
59. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

60. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”².

61. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
62. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

Legitimate interests

63. In considering any legitimate interest in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
64. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
65. The complainant has emphasised the importance in complaints about actions that led to, or the causes of the death of a hospital in-patient being properly investigated. The Commissioner would not disagree with that position. He goes on to argue that there is therefore a legitimate interest in the public knowing how many such cases, an officer of the LGSCO has investigated as this would provide reassurance that that officer had the necessary experience to conduct investigations relating to hospital in-patient deaths.
66. In his submission to the Commissioner the complainant has made reference to the 'Learning From Death Programme'. From internet searches the Commissioner is aware that the National Quality Board is coordinating efforts by the NHS to improve its ability to learn any necessary lessons from patient deaths. The Care Quality Commission produced a report in 2016, 'Learning, Candour and Accountability - a review of the way NHS Trusts review and investigate deaths of patients in England' which found that there were problems in the way trusts identify the need to investigate patient deaths. The Commissioner therefore recognises that there is an increased focus on the need to learn appropriate lessons following the death of a patient and that there have been concerns raised over the quality of the investigations that trusts have conducted. However the Commissioner has not identified any criticism of the LGSCO in the reports she has accessed.
67. Nevertheless the Commissioner accepts that the quality of any investigation into the health care received by patients is a serious issue. The Commissioner therefore accepts there is a legitimate interest in disclosing the withheld information.

Is disclosure necessary?

68. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under

the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

69. The Commissioner notes that although there is no particular appeal process operated by the LGSCO, if an individual is not satisfied with its decision, individuals can go to the High Court and seek a judicial review. Seeking a judicial review may be rather involved and deter some from challenging a decision, but nevertheless there is a means by which a member of the public can take the matter further. This reduces the necessity of disclosing the information in order to hold the LGSCO to account for the quality of its decisions.
70. The LGSCO has argued that there is no value in disclosing the details of the number of cases involving a hospital in-patient death, because this in itself is not indicative of the quality of the investigations that the two named officers could conduct. It has explained that all its investigators and Assistant Ombudsman candidates are recruited against a standard job description including required skill, knowledge and experience in investigative techniques. It does not recruit for experience in particular types of investigations and investigators are expected to investigate complaints regardless of the subjects. Each officer completes a probationary period before being accepted and acquiring the delegated authority to make decisions for the Ombudsman. When any officer is considering a joint complaint, as they would be with a hospital in-patient death, they would have access to extensive knowledge and resources within both the LGSCO and the PHSO.
71. The Commissioner accepts that the types of cases that an officer has previously investigated does not determine their competence to investigate a particular matter, or to produce a robust decision. It may however be a contributory factor. Therefore the Commissioner finds that there is still some, very limited, legitimate interest in disclosing the level of experience staff have developed on a particular subject.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

72. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
73. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;

- whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
74. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
75. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
76. The LGSCO has argued that disclosing the number of hospital in-patient deaths that an officer had investigated would reveal something about the performance of that officer. The complainant counters that the information is simply about the experience those officers have had in respect of a particular type of investigation. The Commissioner accepts that the requested information does not specifically relate to an individual's performance in terms of their competence to investigate a particular issue. As the LGSCO itself argues, the ability of an officer to investigate a matter is more dependent on their general investigative skills and the range of resources, including topic specific resources, that are available to them. Nevertheless the Commissioner considers that it would feel very intrusive for those staff to have details of their experience in a particular area disclosed. Regardless of the lack of any direct link between experience and competence, the Commissioner considers that people would make inferences as to an individual's competence based on their experience. Furthermore being the focus of the requests is likely to be interpreted by some as implying some level of criticism of the performance of those individuals. The Commissioner is not aware of any grounds to doubt the competence of these individuals, therefore this level of intrusion would be unwarranted. The Commissioner is therefore satisfied that the individuals concerned would have no expectation that the requested information on their experience would be disclosed to the world at large through a response to an information request.
77. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

78. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
79. The Commissioner has therefore decided that the LGSCO was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

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

81. 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.
82. 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

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