

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 August 2012

**Public Authority:** Department of Health  
**Address:** Richmond House  
79 Whitehall  
London  
SW1A 2NS

### Decision (including any steps ordered)

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1. The complainant has requested a breakdown of the total expenditure of the Department of Health (the "DoH") associated with the report, *"The Higher Risk General Surgical Patient. Toward improved care for a forgotten group"*. The DoH disclosed some information to the complainant, but withheld the remainder under the exemption for the personal information of third parties (section 40(2)).
2. The Commissioner's decision is that DoH correctly relied upon section 40(2) to withhold the outstanding withheld information.
3. Therefore the Commissioner does not require the DoH to take any steps.

### Request and response

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4. On 4 October 2011 the complainant made the following request for information:  
  
*"Can you please provide me with a copy of Department of Health expenditure associated with the attached report; The Higher Risk General Surgical Patient Toward Improved Care For A Forgotten Group?"*

*Can you also please provide a break down of the total expenditure, including what amounts were paid to specific individuals etc. and for what specific work done?"*

5. The DoH responded on 1 November 2011 and stated that it was unable to respond to this request as to do so would take it above the appropriate cost limit. As such section 12 of the FOIA provided an exemption from the request.
6. The complainant requested an internal review on 7 November 2011.
7. The DoH sent him the outcome of its internal review on 7 December 2011, and informed him that it was no longer relying upon section 12 of the FOIA. It stated that there were 12 members of the working group which had produced the report in question, and that they had met twice. Expenditure for the production of the report was limited to travel and subsistence costs which were offered to the members of the working group. It confirmed that the total sum paid for travel and subsistence costs was £2552.68, but that this did not represent payment to all the members of the working group, as some had not claimed travel and subsistence costs. It was unable to provide a further breakdown, as it believed that to do so would breach the principles of the Data Protection Act 1998 (the "DPA"). As such, section 40(2) of the FOIA provided an exemption from disclosure

## **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. During the investigation of the case the DoH confirmed to the Commissioner that it held some additional information that fell within the scope of the request (other than that it had withheld under section 40(2)). This information was also provided to the complainant.
10. In addition to this, during the investigation the DoH disclosed to the complainant the individual totals for each of the members of the working group who had claimed travel and subsistence costs – although this information was disclosed in an anonymised format, without the names of the individuals who had claimed for these costs.
11. Therefore the scope of this case has been to consider the DoH's use of section 40(2) to withhold the outstanding information on this case, i.e. the information that shows which members of the working group claimed the individual travel and subsistence cost totals now disclosed to the complainant.

## Reasons for decision

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12. Section 40(2) provides an exemption for information which is the personal information of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
13. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the DPA. This is an absolute exemption, and is therefore not subject to a public interest test.
14. The DoH has sought to rely upon this exemption to withhold the names of the members of the working group where that information would show which of these individuals claimed which of the individual travel and subsistence cost totals now disclosed to the complainant.
15. It has argued that the disclosure of this information would be a breach of the principles of the DPA.
16. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of third parties, namely the members of the working group who claimed travel and subsistence costs.
17. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.
18. In this case, the withheld information in question clearly relates to identifiable individuals and is about those individuals. Therefore, the Commissioner is satisfied that this information is the personal data of third parties.
19. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA.
20. The first principle requires, amongst other things, that personal data is processed fairly and lawfully. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
21. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
  - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;

- the individual's reasonable expectations of what would happen to their information; and
  - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.
22. The DoH has argued that the individuals concerned do not have public facing roles, and have no responsibility for how public money is spent. It has argued that they were involved in this working group as a gesture of good will to the DoH, and as such would have had no reasonable expectation that their personal travel and subsistence claims would be made public. It has also noted that although the individuals have not been consulted about the complainant's request, views had been taken at the outset of the work on the report which had confirmed that there was no expectation that any travel and subsistence claims would be made publicly available.
23. Given that the members of the working group were not DoH employees and (other than the individual who was on secondment to the DoH) were providing their services on a voluntary basis, the Commissioner is satisfied that it is unlikely that they would have had any reasonable expectation that the withheld information would be disclosed under the FOIA.
24. In relation to the legitimate interests in disclosure of this information, the complainant has argued that there is a legitimate interest in increasing public understanding of the relationship between the DoH and the Royal College of Surgeons. He has argued that public policy is now being formed on the basis of this report, and the individuals concerned had produced this report on behalf of the DoH. Bearing this in mind, and as these individuals had received payments for travel and subsistence costs, he considered that there was a legitimate interest in making the relationship between the DoH and the individual members of the working group more transparent.
25. The Commissioner accepts that there is a legitimate interest in increasing the transparency of the relationship between the DoH and the Royal College of Surgeons. However, he notes that in this case the withheld information relates to the travel and subsistence costs claimed by the members of a working group who produced one report. He also notes that the DoH has already confirmed that in this case the members of the working group were able to claim travel and subsistence costs, and how much was claimed (by those individuals who claimed these costs). Bearing this in mind, the Commissioner is not convinced that the disclosure of the withheld information in this case would contribute

greatly to increasing the transparency of the relationship between the DoH and the Royal College of Surgeons.

26. The Commissioner also accepts that there is a legitimate interest in increasing the transparency between the DoH and the members of the working group who produced this report. However, he considers that the information already disclosed by the DoH – namely the fact that individuals were able to claim travel and subsistence costs; that not all of the group claimed such costs; and what costs were claimed – has gone some way to satisfying this interest.
27. Taking all these factors into account, and bearing in mind his findings about the reasonable expectations of the individuals concerned, the Commissioner considers that the disclosure of this information would be unfair and in breach of the first principle of the DPA. Therefore his decision is that the DoH correctly relied upon sections 40(2) with 40(3)(a)(i) to withhold this information.

## Right of appeal

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28. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

29. 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.
30. 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, Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
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