

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2014

Public Authority: Leicester City Clinical Commissioning Group
Address: City Headquarters
St John's House
30 East Street
Leicester
LE1 6NB

Decision (including any steps ordered)

1. The complainant has requested information relating to all the members of Leicester City Clinical Commissioning Group ("CCG"). The request included home addresses for members of the governing body.
2. The Commissioner's decision is that the CCG is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the complainant with the outstanding requested information.

Request and response

3. On 8 November 2013, the complainant wrote to the CCG and requested information in the following terms:

1. "The names and contact details of all the members of Leicester City CCG.

The information must include:

- *full names*
- *qualifications*
- *contact telephone number*
- *contact email*
- *contact address work*

- *current employment/self-employment*
- *current academic/clinical research interests/projects*
- *past academic/clinical research interests/projects*
- *other current posts/committees*
- *other past posts/committees*

2. *The following information is desirable if possible under FOI Act:*

- *contact address home*
- *other work including directorships*
- *previous work including directorships*

3. *Please also supply under the Freedom of Information Act:*

The sub committees/boards/groups that all and any of the members of the CCG sit in

The dates the whole/entire CCG sits for the current year 2013, the following year 2014 and for the previous 5 years

The topics discussed at each of the meetings of the CCG over the past 6 years and topics tabled for the current and next year

The dates any sub-committee of the CCG sits for the current year 2013, the following year 2014 and for the previous 5 years

The topics discussed at each of the meetings any sub-committee of the CCG over the past 6 years and topics tabled for the current and next year.

Any mention of MSK therapy including clinical and financial evidence or any individual case requiring treatment of the head, neck, spine, hips, limbs with any form of manipulation including physiotherapy, osteopathy, chiropractory, deep tissue massage, soft tissue massage, inversion therapy.

Any mention of the use of TCM accupuncture or western accupuncture for the use of pain relief or anasthetic in the treatment of the head, neck, spine, hips, limbs or any surgical or clinical procedure associated with the above."

4. The CCG responded on 9 December 2013. It stated that it provided the complainant with links for further details to points 1 and 3 of the request and applied section 40(2) exemption of the FOIA to point 2 of her request.
5. On 30 December 2013 the complainant informed the CCG that not all the information was supplied and that its response is not an answer to her FOI request.
6. On the same day the CCG responded. It explained that it does not release email addresses and personal information of GP Board members. CCG provided a telephone number of a Board Officer for the complainant if she needed to contact a Board member.
7. CCG also informed the complainant that most of the general information she had requested is available on its website. It reiterated that some of the requested information is classified as personal information and therefore cannot be disclosed.
8. On 9 January 2014 CCG wrote to the complainant outlining its policy which is not to publicly provide direct email addresses for individual members of its governing body and it explained its reasons.

Scope of the case

9. The complainant contacted the Commissioner on 29 January 2014 to complain about the way her request for information had been handled.
10. Therefore the Commissioner has considered whether CCG was correct to apply section 40(2) of the FOIA to the first line of point 2 of the request as a basis for refusing to provide the complainant with the requested information.

Reasons for decision

Section 40 (2) – Requests for third party personal data

11. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.

Personal data

12. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the

data controller or is likely to come into the possession of the data controller.

13. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. 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, had them as its main focus or impacts on them in any way.
14. The Commissioner has viewed the withheld information and notes that it relates to the governing body members. This is information which relates to living individuals from which they could be identified. Therefore the Commissioner considers that the information in question is personal data and, as such, falls within the scope of this exemption.
15. In the CCG's response to the complainant, it stated that in providing the requested information, this would breach the first principle of the DPA.
16. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met and (in circumstances involving the processing of sensitive personal data) at least one of the conditions of schedule 3 should be met.
17. The Commissioner has first considered whether disclosure would be fair.

The Commissioner's approach to fairness

18. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

19. The CCG stated that it would be inappropriate to release a person's home address as it is personal data. The Commissioner would generally expect this information to be confidential.

Would disclosure cause damage and distress to the data subject?

20. The Commissioner notes that the information in this case is personal data relating to the individual's address details. Therefore, the CCG stated that it felt that its governing body members could be at risk of harassment by the complainant if the information was disclosed.
21. The Commissioner would generally expect this information to be confidential. Therefore he is satisfied that the disclosure of this information would cause damage and distress to the individual.

The legitimate public interest

22. The complainant has stated that she is dissatisfied with the response from the CCG. She believes that the CCG has not complied with her request.
23. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
24. The Commissioner considers that there is a legitimate public interest in openness and transparency. However, he notes that in this case the focus of this information is personal information concerning the governing body members. He also notes that most of the requested information was disclosed to the complainant. He considers that this goes some way to meeting the legitimate public interest in this case.
25. Taking this and all the factors of the case into account, the Commissioner considers that the legitimate public interest in the disclosure of the remaining information in question is limited.
26. The CCG stated that if a member of the public wanted to make contact with a member of the governing body, it encourages them to use the CCG e-mail address.
27. The Commissioner notes that some of the requested information was disclosed to the complainant. This included the papers from the governing body meeting, the appropriate links to access this information was provided and a copy of the Register of Interests which was sent to the complainant.

28. He acknowledges that the CCG has a policy, whereby if members of the public need to make contact with a member of the governing body, they can use the CCG email address and all correspondence is directed to the appropriate person. The Commissioner has noted that the CCG stated this to the complainant and informed her that it would not provide home addresses for the governing body members. It explained that disclosure would indicate that the organisation did not take the appropriate measures against unlawful processing of personal data.
29. The CCG has confirmed that the first line of point 2 of the request relates to the individual's address details and it believes that the information requested is of a personal nature.
30. Taking into account the reasonable expectations of the members of the CCG, and the potential impact on them if their personal data were to be disclosed, the Commissioner considers that it would be unfair to disclose the remaining requested information. Whilst he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. Therefore it is the Commissioner's decision that section 40(2) of the FOIA was applied correctly in this case.

Right of appeal

31. 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: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Rachael Cragg
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