

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2014

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has requested the personal data withheld from the 10 documents previously redacted under section 42 about the de-registration of the home care agency Country Cousins. The Commissioner's decision is that the Care Quality Commission (CQC) has correctly applied section 40(2) to the withheld information.
2. The Commissioner does not require the CQC to take any steps.

Background

3. Companies classed as 'introductory agencies' do not need to be registered under the Health and Social Care Act 2008 with the CQC. The complainant questioned the de-registration of a particular care agency 'Country Cousins' in September 2011. In September 2012 the complainant requested paper copies of all correspondence on the de-registration discussions and in October 2012 CQC provided a detailed response under DPA and FOI but redacted some information (within a batch of 10 documents) citing section 42, legal professional privilege.
4. There was further correspondence between the complainant and CQC and a complaint was brought to the Commissioner on 6 January 2014. During the course of the Commissioner's investigation the CQC provided the information previously redacted in the 10 documents under section 42, but with the personal names redacted under section 40.

Request and response

5. On 19 April 2014 the complainant wrote to the Commissioner to confirm that he had received all of the information with the legal advice unredacted.

'However, some names of CQC staff have been withheld within these documents. The CQC suggest that I make a separate complaint to the Information Commissioner's Office, as I disagree with the CQC's redaction of names of some CQC staff: the redaction makes it impossible for me to make overall sense of the documents.'

6. On 24 April 2014, the Commissioner explained that the case considering section 42, the legal professional privilege exemption, was closed but had been re-opened to consider the redaction of the names within the 10 documents that had been provided. The new request was accepted as part of the same complaint as the complainant had already been through the internal review process at CQC.
7. On 1 May 2014, CQC provided the 10 documents again with the redacted names replaced with the job titles of the individuals to help make overall sense of the documents provided.

Scope of the case

8. On 1 May 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically raised the issue of the redaction of the names as he considered *'that it is in the public interest that the names of all of the individuals are provided'*.
9. The Commissioner has clarified the issues under investigation with the complainant and as such the scope of this case is to determine if the CQC has correctly applied section 40(2) of the FOIA to the 10 documents.
10. On 9 May 2014 CQC provided to the complainant two of the withheld names and provided section 40 arguments to the Commissioner for the remaining names.

Reasons for decision

Section 40(2) – Third party personal data

11. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The names of the individual employees are clearly personal data.

Would disclosure breach the Data Protection Principles?

13. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
14. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

15. The Commissioner has issued guidance about requests for personal data about public authority employees:
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx
16. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so.
17. The CQC has confirmed that the roles where the individual names have been withheld are Business Services Administrator, Compliance

Inspector, Designer, Legal Advisor, Marketing Services Officer, Policy Manager, Press Officer, Principal Legal Advisor, Product Officer, Registration Advisor, Senior Designer.

18. CQC have argued that staff employed in these roles would not have an expectation that their names would be disclosed into the public domain. Most do not undertake a public facing role and all are junior roles listed on the CQC Junior Staff Pay Scale. In addition, CQC argued that although Inspectors are public facing employees,

'they do not have a level of seniority and responsibility that would bring with it the expectation that their name would be made publicly available under the FOIA. Responsibility for the work of our inspectors rests with the Inspection Managers. It is also worth noting that CQC's current policy is that we do not name individual inspectors in our published inspection report. This policy is due to a number of incidents where:

- *CQC inspectors have been contacted directly at home by media organisations,*
- *CQC inspectors received death threats following Winterbourne View*
- *Allegations were made against an inspector of fraud relating to inspections of a care service*

Equally, the other staff names that have been withheld do not hold a public facing role (legal advisors) or do not perform a role with sufficient seniority to have an expectation of disclosure of their names.'

19. Therefore the Commissioner understands that the CQC would not routinely make public such information and the individuals in this case have not consented to such a disclosure.

Consequences of disclosure

20. CQC has stated that the possible consequences of disclosure in terms of damage and distress are unlikely to be high in this case. However, there is the potential that once disclosed the information could be *further disclosed onto social media and more widely on the internet to criticise individuals, or that these individuals may be directly contacted by a person undertaking a determined campaign to get CQC to reconsider its view on whether Country Cousins, and other introductory agencies, are required to register'*

21. In addition, CQC have argued that where names are already in the public domain on websites such as LinkedIn or Legalbot, this would

not automatically link them with these issues and these individuals would not automatically expect that their name would be disclosed by CQC under FOIA as a result.

22. In a similar case, FS50401773, the Commissioner decided that it would be unfair to disclose the names of the junior officials. UKBA claimed that, in the past, correspondence from UKBA officials had been published on the internet which had led to officials being targeted. The Commissioner accepted that the nature of the information could lead to individuals being targeted, and the distress this would cause was a factor in making the disclosure unfair.
23. The Commissioner is satisfied that the individuals would have a reasonable expectation that their names would not be placed into the public domain by disclosure under the FOIA. Therefore he considers that disclosure of this information would be an invasion of the privacy of the individuals, and as such may cause some distress.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

24. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
25. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff 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.
26. CQC have argued that *'The public interest is served by CQC's decision to waive legal professional privilege to the information. We do not see that there is a public interest in disclosure of the names of junior employees, particularly where they were not involved in the discussions.... we cannot see any significant public interest that would be served by the disclosure of these names. Therefore, in considering the balance of public interest inherent in condition 6 of schedule 2 of the Data Protection Act 1998, we consider that the balance of public interest is against disclosure.'*
27. The Commissioner notes that the complainant may have a personal interest in knowing the names of the data subjects as he wishes to pursue research into the background of the individuals as he believes that it may relate to the decisions made on the discussions around

Country Cousins and whether introductory agencies are required to be registered.

28. Balancing the above, the Commissioner is satisfied that the data subjects would have no reasonable expectation that the information in question would be disclosed to the world at large and that there is no public interest in disclosing the names within the information previously withheld under section 42, legal professional privilege.
29. Therefore, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the CQC's application of the exemption provided at section 40(2) of the FOIA.

Conclusions

30. The Commissioner is satisfied that it would be unfair to provide the names of the junior employees. Such disclosure would contravene the first data protection principle and would not be fair.
31. The Commissioner is therefore satisfied that the CQC was correct to refuse to disclose this information under section 40(2) of the FOIA.
32. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Right of appeal

33. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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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