

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2015

Public Authority: Parliamentary and Health Service Ombudsman
(PHSO)

Address: Millbank Tower
Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested the name, contact details, qualifications, experience and publication record of the four GP expert witnesses who advised on his case. The PHSO has provided the complainant with some information but has refused to provide some of the requested information under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the PHSO was correct to apply section 40(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 17 July 2014 the complainant requested the name, contact details, qualifications, experience and publication record of the four GP expert witnesses who advised on his case.
5. On 14 August 2014 the PHSO responded. It provided the complainant with the qualifications and experience of the expert witnesses but refused to provide their names and contact details under section 40(2) FOIA.

6. The complainant requested an internal review on 8 October 2014. The PHSO sent the outcome of its internal review on 3 December 2014. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 8 September 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the PHSO is correct when it says it is entitled to rely on section 40(2) FOIA in this case.

Reasons for decision

9. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
10. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:
"data which relate to a living individual who can be identified –
 - (i) from those data, or
 - (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."
11. 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, has them as its main focus or impacts on them in any way.
12. The PHSO has explained that it considers that the name and contact details of the four clinical advisers who advised on the complainant's case, is information from which the data subjects would be identifiable. To clarify it said one individual provided the advice and three individuals peer reviewed that advice. The Commissioner considers that the withheld information is the personal data of the four individuals described.

13. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection 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. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

Likely expectation of the data subject

14. The PHSO has confirmed that the four individuals have not consented to their names and contact details being disclosed in this case. The PHSO has also explained that whilst the four individuals provided advice or reviewed advice provided in relation to the complainant's case, they were not the decision makers in relation to the final outcome.

Damage and distress

15. The PHSO argued that the complainant may want to know the names and contact details of the four individuals involved in his case, to contact them to try to influence or put undue influence upon them to modify their advice. It said this may cause disruption to their professional and personal lives.

The legitimate public interest

16. The PHSO acknowledged that there is a legitimate public interest in the public being satisfied that its advisers are appropriately qualified and experienced to give advice and conduct peer reviews of clinical advice given.
17. The PHSO has explained that it believes the complainant wishes to obtain the contact details to enable him to directly challenge the decision made. However it explained that the appropriate route to challenge the decision (and any clinical advice given in relation to the case), would be the PHSO's internal complaints procedure. It said the complainant went through this procedure as he was dissatisfied that his complaint had not originally been upheld. The PHSO confirmed that on review the complaint was subsequently upheld.

18. The Commissioner considers that there is a legitimate public interest in holding the PHSO to account for decisions made. However in this case there is a satisfactory route to challenge decisions made through the PHSO's internal complaint's procedure. Furthermore the PHSO has disclosed the qualifications and experience of the individuals involved with the clinical advice given in relation to the complainant's case, to demonstrate that those individuals have sufficient qualifications/experience to provide such advice. The Commissioner considers that this goes a significant way to meeting the legitimate public interest. The Commissioner considers that disclosure of the names and contact details of the four individuals relevant to this case would not add significantly to the legitimate public interest. This is particularly so as these individuals were not ultimately responsible for the final decision made in relation to the complainant's case.
19. The Commissioner therefore considers section 40(2) FOIA was correctly applied to the withheld information in this case.

Right of appeal

20. 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:

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

21. 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.
22. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF