

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 October 2016

**Public Authority:** Peterborough and Stamford Hospitals NHS Foundation Trust

**Address:** Edith Cavell Campus  
Bretton Gate  
Peterborough  
Cambridgeshire  
PE3 9GZ

### Decision (including any steps ordered)

---

1. The complainant made a freedom of information request to the Peterborough and Stamford Hospitals NHS Foundation Trust for copies of competency to practice declarations of staff who were authorised to carry out venesection procedures. The Trust refused the request under the section 40(2) exemption on the grounds that the information was personal data and disclosure would contravene the first data protection principle.
2. The Commissioner has decided that the section 40(2) exemption was correctly applied and she requires no steps to be taken.

### Request and response

---

3. On 9 March 2016 the complainant made a freedom of information request to the Peterborough and Stamford Hospitals NHS Foundation Trust ("the Trust") which asked for competency to practice declarations of staff that were authorised to carry out venesection procedures. This followed an earlier request the complainant had made on 10 February 2016 where he had asked for redacted copies of the declarations but had been advised that this would not reveal any information beyond what the Trust had already disclosed to him. The 9 March request read as follows:

*"In that case, may I request the un-redacted copies of the competency declarations, or if the trust prefers, copies of the declarations with the authorising signatory and/or name shown and the individual practitioners' signatures redacted?"*

4. The Trust responded to the request on 16 March 2016 when it explained that the information was being withheld because the names of practitioners was personal data and therefore exempt under section 40(2) of the Act. It said that in its view disclosure would contravene the first data protection principle which requires that personal data be processed fairly and lawfully.
5. The complainant subsequently asked the Trust to carry out an internal review of its handling of his request and it presented its findings on 19 July. In respect of the 9 March request the Trust explained that it was upholding the decision to withhold the information under the section 40(2) exemption.

## **Scope of the case**

---

6. The complaint initially contacted the Commissioner on 27 May 2016 to complain about the Trust's refusal of his request. The Commissioner did not open an investigation at this point as the Trust had yet to complete an internal review. Following completion of the internal review the Commissioner accepted the complaint and she considers the scope of her investigation to be to consider whether the section 40(2) exemption was correctly applied to refuse the request.

## **Reasons for decision**

---

### **Section 40(2) – Personal information**

7. So far as is relevant to this case, section 40(2) provides that information is exempt if it is the personal data of someone other than the applicant and disclosure would contravene any of the data protection principles in the Data Protection Act 1998. In this case the Trust has said that in its view disclosure would contravene the first principle which requires that personal data be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions listed in Schedule 2 of the DPA can be satisfied.

8. In deciding whether section 40 is engaged the first thing to consider is whether the requested information is personal data. Personal data is defined in the Data Protection Act 1998 as:

*“personal data” means data which relate to a living individual who can be identified—*

*(a) from those data, or*

*(b) 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 intentions of the data controller or any other person in respect of the individual;*

9. The requested information in this case comprises competency to practice declarations which are forms completed by staff to demonstrate that they are competent in a particular procedure. The forms include the name of the staff member concerned, their signature, as well as the names and signatures of an assessor who has countersigned their declaration. The Commissioner understands that the names and signatures are the only information that has been withheld – all of the other information in the forms having previously been disclosed to the complainant. The Commissioner is satisfied that this information is personal data as the information clearly identifies the individuals concerned.
10. The next thing to consider is whether disclosure of the requested information would contravene the first data protection principle. The Commissioner's approach when considering the first principle is to start by looking at whether the disclosure would be fair. Only if the Commissioner finds that disclosure would be fair will she go on to look at lawfulness or whether a Schedule 2 condition can be satisfied.
11. In assessing whether disclosure would be unfair, and thus constitute a breach of the first data protection principle, the ICO takes into account a number of factors, including the following:
- Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?
  - What reasonable expectations does the individual have about what will happen to their personal data?
  - What are the consequences of disclosure?
  - Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?

- Are there any legitimate interests in disclosure which would outweigh the rights and freedoms of the data subject?
12. The Trust has said that in its view the staff members concerned would not have a reasonable expectation of disclosure. It also said the nursing staff whose names had been withheld had not consented to their personal information being placed in the public domain.
  13. As regards the consequences of disclosure the Trust said, this would be not only distressing for staff but had the potential to place them at risk. It also suggested that if the information is linked to information already in the public domain it has the potential for the public to make incorrect assumptions about a particular nurse's performance within their profession.
  14. The Commissioner has considered the withheld information and the Trust's arguments and accepts that the individuals concerned would have had a reasonable expectation that their personal data would not be disclosed. Whilst the information relates to their public rather than their private lives the Commissioner is also mindful that they are relatively junior members of staff and so would not necessarily have a high expectation of transparency about their role. Employees generally expect that details of their employment are treated confidentially by their employer and so on balance, the Commissioner is satisfied that there would be a reasonable expectation of disclosure in this case.
  15. The Commissioner also understands that the complainant is very unhappy about the level of service he has received from the Trust in relation to the operation of a venesection procedure. The Trust has also provided the Commissioner with further details about the complainant's previous involvement with the Trust regarding his complaints about the level of care he received. This leads the Commissioner to conclude that disclosure in this context would indeed be distressing to the individuals concerned and could well impact them personally and professionally as the Trust suggests.
  16. However, notwithstanding individuals' expectations of privacy or any harm that could be caused, there may be occasions when it is still fair to disclose information if there is a public interest in doing so or if the legitimate interests of the applicant outweigh the rights and freedom of the data subject. On this point the complainant has said that the information is necessary to protect his "vital interests" with regards to the "prompt and appropriate treatment of my illness by competent/trained staff and to prevent my physical harm".

17. He also suggested that the information is required in his "legitimate interests". This is because, he said, the competence certificates form a part of the nursing staff training and illustrate each staff member's training and competence to undertake the venesection clinical procedure. He explained that all nursing staff are required by their Royal College of Nursing registration to maintain a continuing professional development file (CPD) recording such competence certificates and to make this file available for inspection by their employer and their regulator, the Nursing & Midwifery Council. He said that since the Trust was engaged in his treatment, it was reasonable for them to provide copies of the competence certificates in their role as the employer of the nursing staff.
18. The Commissioner has considered the complainant's comments but she does not see how disclosing the names of nursing staff who had completed personal competency declarations would be of any assistance to the complainant or help him receive treatment. The Trust has already confirmed to the complainant the numbers of staff within the department who are signed as competent in the procedure. It also explained that three members of staff were currently in training and that one member was not yet ready to start the training process. It provided the dates on which each member of staff was signed as competent. The only information that was redacted are the names and signatures of staff members. In light of this the Commissioner finds that any legitimate interests in disclosure are outweighed by the legitimate interests in protecting the rights and freedoms of the data subjects.
19. For these reasons the Commissioner has found that disclosure would contravene the first data protection principle and that therefore the section 40(2) exemption is engaged.

## 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Paul Warbrick**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**