

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 August 2019

**Public Authority:** South Western Ambulance Service NHS  
Foundation Trust

**Address:** Trust Headquarters  
Abbey Court  
Eagle Way  
Exeter  
Devon  
EX2 7HY

### **Decision (including any steps ordered)**

---

1. The complainant has requested information on the Wiltshire novichok incidents, including emergency response times and details of time at the scene and time taken to get to the hospital by the ambulances attending. The public authority refused to provide the information on the basis of section 24, 38 and 40 of the FOIA.
2. The Commissioner's decision is that South Western Ambulance Service NHS Foundation Trust has correctly applied the provisions of the section 24 exemption and the public interest favours maintaining the exemption and withholding the requested information. She therefore does not require any steps to be taken.

### **Request and response**

---

3. On 22 December 2018 the complainant made a request to South Western Ambulance Service NHS Foundation Trust (the Trust) about the Wiltshire novichok poisonings in the following terms:

*"What time was the ambulance service alerted?  
When were the ambulances despatched? (each)  
When did they arrive on the scene? (each)"*

*When did they depart the scene? (listing details for each patient, and those that did not convey patient(s))*

*When did each patient arrive at hospital?*

*For incidents in Salisbury on the 4<sup>th</sup> March 2018 and Amesbury 30<sup>th</sup> June 2018*

*What vehicle(s) was/were involved in the Amesbury Ambulance station closure / army involvement?*

*Please give details."*

4. The Trust responded on 28 December 2018 and stated that any freedom of information requests relating to the Salisbury incident should be directed to the Police in the first instance.
5. The complainant responded on the same date to state that this response was incorrect and that there was no provision in the FOIA to divert a request rather than responding. The complainant asked for an internal review.
6. The Trust conducted an internal review and responded on 13 March 2019. It stated that any information it held should be withheld from disclosure under section 24 of the FOIA as it related to ongoing counter-terrorist investigations. In addition to this, the Trust also sought to rely on section 38 and 40 of the FOIA to withhold the information relevant to the request.

## **Scope of the case**

---

7. The complainant contacted the Commissioner following the internal review on 18 March 2019 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if the Trust has correctly withheld information within the scope of the request on the basis of any of the cited exemptions – sections 24, 38 or 40.

## **Reasons for decision**

---

### **Section 24 – national security**

9. Section 24(1) states:

*"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."*

10. Section 24(1) provides an exemption from the duty to disclose where this is reasonably required for the purposes of national security. Consideration of this exemption involves two stages; first, the exemption must be engaged due to the requirements of national security. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
11. The FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office*<sup>1</sup> the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
  - "national security" means the security of the United Kingdom and its people;
  - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
  - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
  - action against a foreign state may be capable indirectly of affecting the security of the UK ; and
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
12. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean reasonably necessary. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or

---

<sup>1</sup> (EA/2006/0045)

immediate. The exemption will, therefore, be engaged if it is reasonably necessary for the purpose of safeguarding national security for the requested information to be withheld.

13. The Trust has stated that the Salisbury and Amesbury incidents are under investigation by counter-terrorism units within the UK and across wider security services. The initial attack targeted two Russians, one believed to be an intelligence agent and as such the incident is of diplomatic sensitivity in terms of the relations between the UK and Russia and matters of terrorism, counter-terrorism and espionage on an international stage.
14. The nerve agent used in the attack, Novichok, has been recognised as a chemical weapon and is, at the time of this request, believed to be of Russian origin. In addition to this the EU had put sanctions on senior officials from the Russian Military Intelligence Agency (the GRU) over the Salisbury poisonings. The individuals in question are currently in Russia and two of them are being charged by the UK for attempted murder<sup>2</sup>.
15. The Commissioner's guidance on the use of the section 24 exemption<sup>3</sup> advises that national security involves cooperation with other states in combating international terrorism and guarding against actions targeted at other states which may impact on the UK. Her guidance states that:  
  
*"It is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK. In a time of global terrorism our national security can depend on cooperating with others. This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that the exemption can be engaged to prevent a disclosure that would have adverse consequences for one of these partners even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens."*
16. The Trust is concerned that due to the political delicacy of the UK/Russia relationship, disclosure of this information to the world at large has the potential to negatively impact on UK/Russia relations.

---

<sup>2</sup> <https://www.bbc.co.uk/news/world-europe-46949162>

<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1174/safeguarding\\_national\\_security\\_section\\_24\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf)

17. Furthermore, providing details of the Trust's capability to respond to an incident of this nature could increase the risk of a future attack on the UK. The Trust considers that possessing information relating to the speed of an emergency response could provide a terrorist organisation with the confidence and knowledge to better plan an attack.
18. The Commissioner acknowledges this point – her guidance on this subject makes it clear that where terrorists are motivated they will go to great lengths to obtain intelligence. Even if the information may seem harmless it is possible it could be used to assist terrorists in piecing together more meaningful information.
19. The Commissioner must also consider whether disclosing the requested information would be likely to increase the risk of any attack taking place.
20. The information requested if disclosed would give details of the emergency response by the Trust including how quickly ambulances are dispatched, the time taken at the scene, how quickly they were able to depart and arrive at hospital and the types of vehicles dispatched. In addition to this, the requested information covers the vehicles involved and army involvement in the station closure.
21. The Commissioner is satisfied that disclosure of this information could assist any individual or organisation in planning a targeted attack of a similar nature as it would provide intelligence information that could be used to enhance the chances of a successful attack by understanding the emergency response times and planning accordingly.
22. The exemption also requires the provision of a certificate by a Minister of the Crown if one has been issued. In this case, the Trust has explained that this is not a mandatory requirement and no certificate was issued. The exemption has been applied on the basis of the expertise and experience of the Trust's staff in the areas of resilience and emergency preparedness.
23. Taking all the above into account, the Commissioner's view is that in this case, the exemption from the duty to disclose in relation to the information in question is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of the FOIA is engaged.

### **Public interest test**

24. Section 24 is a qualified exemption and so it is nevertheless necessary to consider whether the public interest favours maintaining the exemption or disclosing the information.

25. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the particular exemption, as well as the specific factors that apply in relation to the requested information.

*Public interest arguments in favour of disclosing the information*

26. The Trust recognises there is a public interest in the disclosure of information which promotes openness and transparency within the Trust and provides reassurance to the public that the Trust has the capacity to respond to incidents.
27. The complainant has argued that confirmation from the Trust about the response to the incident, including timings, is important as the Metropolitan Police have been dishonest in their statements. He considers that it is important to have confirmation from the Trust to be able to ensure the accuracy of the information that has been made public by the Police about the incidents.
28. The complainant states that the Police have publicly confirmed the times of the calls to the emergency services but confusion has arisen as a later response indicated that the first call relating to the Salisbury incident was a silent call and there was a subsequent call which gave location details. The complainant argues that there has been dishonest information from the police about what happened and disclosing the requested information will clarify the timeline.
29. In terms of the ambulance station closure, the complainant argues that it is important it is known exactly what happened and the reasons behind the closure and continued issues with the reopening of the station.

*Public interest arguments in favour of maintaining the exemption*

30. The Trust argues that it is already widely known that the ambulance service provided an emergency response to both Amesbury and Salisbury. The Trust considers there was no notable public criticism at the time of the incident of its involvement and it therefore considers there is already reassurance that the ambulance service response to the incidents was appropriate.
31. The Trust has stated that it covers an area of approximately 10,000 miles and a population of 5.5 million people. Modern terrorists are increasingly attacking more popular areas, including tourist hotspots and areas favoured by holidaymakers. The Trust covers areas which are some of the most popular in the UK, including Devon and Cornwall. In addition to this there are increased risks associated with areas where

populations temporarily densify such as music festivals, concerts and Christmas markets. The Trust points to the high number of festivals in its area, including Glastonbury and to reiterate this point has quoted from MI5's threat level website:

*"Terrorist cells also target less well-protected places frequented by Westerners. These could include locations where crowds gather such as social and retail venues, tourist sites and transport networks... The effectiveness of randomly targeting a public place comes from the likelihood of low security and the element of surprise."*

32. The Trust argues that there are real and specific threats to national security in the UK and these threats could increase with the release of information about how the Trust mobilised its response to an act of terrorism. It is therefore argued that disclosing the information is not in the public interest as no one wants an increased risk of terrorism in any part of the UK.

#### *Balance of the public interest arguments*

33. In any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information.
34. In this case the public interest in the maintenance of the exemption concerns preserving the ability of the Trust to operate an effective ambulance service and to be able to respond to emergencies. Whilst the information requested may not seem crucial to maintaining national security, the Commissioner maintains the view that this is information that could be used by a motivated individual to glean information about emergency responses which could be used to assist in planning future attacks.
35. The Commissioner finds the public interest in this to be substantial and weighs overwhelmingly in favour of the maintenance of the exemption. Whilst there are some arguments for disclosing information about the emergency responses the Commissioner is not minded to accept there is a wider public interest in this information. The ambulance service has not been implicated as having reacted inappropriately to the incident to the best of the Commissioner's knowledge and therefore it does not seem that there is any compelling public interest in disclosing details of its responses to the incidents. The Commissioner notes there is likely to be some interest to those individuals directly affected or involved in the

incident but this does not equate to a wider public interest in the information.

36. The Commissioner does not consider that the public interest in disclosing the information matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, that the Trust has correctly applied section 24(1) of the FOIA to the withheld information and the public interest in the maintenance of the exemption outweighs the public interest in disclosure. She has therefore not gone on to consider the other exemptions.



## Right of appeal

---

37. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

38. 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.
39. 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 .....**

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