

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 August 2020

Public Authority: NHS West Sussex Clinical Commissioning Group

Address: Wicker House

High Street

Worthing

BN11 1DJ

Decision (including any steps ordered)

1. The complainant has made two requests for information relating to the provision of continuing health care for patients with Acquired Brain Injury (ABI). The first was for the job description of the officer responsible for commissioning such care and the second for the standard contract used when commissioning the care. NHS West Sussex Clinical Commissioning Group (the CCG) has withheld the job description under section 40 on the basis that it is the personal data of the post holder. It did eventually provide a copy of the relevant 'standard contract'.
2. The Commissioner's decision is that the CCG is not entitled to withhold the job description under section 40. To avoid the risk of disclosing any personal data relating to the post holder in the public version of this notice, a confidential annex identifying the specific role has been provided to the CCG and the complainant. The Commissioner finds that the CCG has now provided all the information relating to the standard contract. However by disclosing this information outside the 20 working days the CCG has breached section 10. The CCG has also breached section 10 by failing to provide the job description.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the job description identified in the confidential annex.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. At the time the complainant originally made his request the relevant public authority was NHS Coastal West Sussex CCG. Following a merger on 1 April 2020, the responsible public authority became NHS West Sussex CCG. For ease, the relevant public authority will be referred to simply as the 'CCG' throughout this notice.
6. The history of the request is complex. This is in part because of the complexity of the CCG as an organisation which meant that the complainant, as a lay person, had difficulty unravelling how it performed its functions. The problem was compounded by the CCG's inconsistent use of terms and descriptions of documents and procedures. The complainant was also in contact with various business areas of the CCG and at times the CCG found it difficult coordinate responses to the ongoing dialogue. The complainant has provided the Commissioner with many copies of emails and letters between himself and the CCG. In setting out the history of the request the Commissioner has focussed only on the main pieces correspondence.
7. On 26 June 2019 the complainant emailed the CCG as part of ongoing correspondence regarding a particular care home, commissioned by the CCG to provide continuing healthcare for patients. The concerns arise from a particular incident dating from 2016. In his email the complainant sought information relating to the role and, what he described as, the service levels expected of the CCG employee who was responsible for commissioning the services of the care home in question. The Commissioner notes that the complainant did not explicitly state that he was seeking the job description for that role. However the information sought could include that in a job description.
8. It is clear from an email received by the complainant from the CCG's Customer Relations Manager dated 23 July 2019 that the CCG understood this request to relate to the particular incident in question.
9. On 30 July 2019 a senior member of the Continuing Health Care Team wrote to the complainant. The letter explicitly states that it is a response to his email of the 26 June 2019. The letters states that:

"In your email you ask for a number of documents which are not documents that the CHC Team hold as they are not deemed necessary to meet our day to day routine work and service delivery."

It later identifies the job role which was the subject of the request as being Job Role X (actual title provided in confidential annex). Having carefully read the complainant's email of the 26 June the Commissioner is satisfied that the only information which was being sought at that stage was information relating to job role of what had now been identified as Job Role X. The most natural interpretation of CCG's response was that it did not hold the information requested about that job role, which one would expect to include the job description for that role. It later transpired that the CCG did in fact hold the relevant job description and a copy of it has been provided to the Commissioner as part of her investigation. The CCG is unable to say where the confusion arose as to the existence of the information requested by the complainant, but has advised the Commissioner that the inclusion of the sentence quoted above was most likely down to human error.

10. Although in their letter of 30 July 2019 the senior member of the Continuing Health Care Team did not provide a job description, they did provide some details of responsibilities that someone working at the relevant level would have and provided details of the qualifications and number of years' experience which the actual post holder had. To some extent the letter did address the issues raised by the complainant.
11. On 11 August 2019, the complainant wrote to the CCG again. He referred to his email of the 26 June 2019 and again asked for information on the responsibilities of the role of the officers who commissioned such services and the qualifications required for that role. The request was made in the following terms:

"Q1 26-6-19 Please provide as above roles / responsibilities and service level agreements to the public / clients for the above*? (*The role of Commissionaire)

You have advised as below that " these are not documents that the CHC team holds!

We deduce that either there is no formal job description / code of conduct or ethics? or if there is someone else like a managing authority holds this documentation!

Please confirm that there is either no formal written role for the commissionaire? else supply it regardless of who hold it?

Q2. Pease provide what qualifications are required for the role of commissionaire?, and if any professional qualifications are required to hold the post?

So far and in summary you have

You have also advised that to be appointed to the role of [Job Role X] that there is also no requirement for such professional association / registration?

This FIO request requires;

1. Re-confirmation of the above from the FIO team, or the supply of the documents discussed.

2. Should the position be maintained that [Job Role X] is not required to hold any professional registration, to which in the absence of a job description he could be held to account, please supply the list of superiors to which he reports until those roles require registered membership of a professional body?"

12. There continued to be ongoing correspondence between the two parties. At this stage the CCG considered the best approach was to try and address the complainant's concerns about the CCG's delivery of continuing health care, rather than handling the matter as an information request under the FOIA.

13. On 11 September 2019 the complainant emailed the CCG again and so far as is relevant, requested information in the following terms:

"[FIO-1] Please supply the job description roles and responsibilities of an NHS Funding Commissionaire for Mental Health/Disability service (or General if this covers wider services), along with any standard contract / service conditions that must be met when entering in to contracts with service providers."

[FOI-2] Please supply the functioning description /roles and responsibilities of an NHS Commissioning team for Mental Health /Disability services (or General if this covers wider services), along with any standard contract / service conditions that must be met when entering in to contracts with service providers. Please also supply the staffing structure, role titles and numbers of staff required at each role to provide robustness to meet service levels as required by your procedures /NHS contracts.

[FOI-3] Please supply ... "

14. At an early stage in the Commissioner's investigation the complainant identified the handling of his request dated 11 September 2019, and in particular the request for the 'standard contract' to be his main concern. During the course of his investigation he broadened his complaint to cover his request of the 11 August 2019 in so far as it sought the job description for the role described in the confidential annex as 'Job Role X'.

15. The then Chief Executive Officer of the CCG responded on 22 October 2019. The CCG's letter dealt with a number of issues. On page 2 of the letter the Chief Executive Officer states:

"I note your request for a job description of [name of post holder redacted]'s role. I confirm there is a job description for this role which, in line with internal processes, is reviewed as required to ensure it remains current. [Name of post holder redacted] is the only individual employed by the CCG holding this job title we are again unable to disclose this information as it is personal to him.

16. On the third page of the same letter the Chief Executive Officer quotes requests [FOI-1] and [FOI-2] from the 11 September request and responded as follows:

"Please supply the job description roles and responsibilities of an NHS Funding Commissionaire for Mental Health/Disability service (or General if this covers wider services), along with any standard contract / service conditions that must be met when entering into contracts with service providers.

Within the CHC There is a specialist Clinical Operations manager which includes responsibility for Mental Health/Disabilities. I confirm there is a job description for this role which, in line with internal processes, is reviewed as required to ensure it remains current. As the only individual employed by the CCG holding this job title we are again unable to disclose this information as it is personal to them.

Any patient with a speciality, where care is commissioned by the CCG, would require personalised care and support, which would require personalised commissioning. The individual contracts (Service Level Agreement) are therefore patient specific.

Please supply the functioning description /roles and responsibilities of an NHS Commissioning team for Mental Health /Disability services (or General if this covers wider services), along with any standard contract / service conditions that must be met when entering in to contracts with service providers. Please also supply the staffing structure, role titles and numbers of staff required at each role to provide robustness to meet service levels as required by your procedures /NHS contracts

Please see response above. Should you wish to be furnished with an overall CHC structure chart I will ensure this is provided to you.

There are no standardised contracts as you have described; however there is standard text within service level agreement templates. If this would be something that will be useful to you I will arrange with the CHC Team to contact you directly."

17. In respect of the request for the job description it would appear that the CCG interpreted the job description that was requested on 11 August 2019, as being different from that requested on 11 September 2020. It is not clear on what basis the CCG made this distinction, or whether the complainant intended to request two different job descriptions. As discussed earlier, the history of this request is complex and as a consequence this may have meant that, at times, the complainant and CCG were at cross purposes. However the Commissioner has confirmed with the complainant that in respect of the job description, the role he is interested in is that described in his request of 11 August 2019 and that this is the job role which the Chief Executive Officer discusses by reference to the name of the actual post holder on page 2 of his letter. That job role is 'Job Role X'.
18. On the 23 October 2019 the complainant responded to the Chief Executive Officer's letter by email. He had become aware of the existence of NHS Standard Contracts, presumably by searching the internet. He considered these would have been captured by his request and so challenged why the CCG had not provided them in the following terms:

"In order to respond properly I would draw your attention to the matter that there is an instrument in place (The Standard Contract) by which any commissionaire should ensure MDT* care supplier standards meet legal requirements – you have far for whatever reasons not disclosed this document?"

*It is understood that 'MDT' refers to 'multidisciplinary teams'.
19. In that same email the complainant confirmed that he did want the a copy of the standard text that had been referred to.
20. The complainant was provided with a copy of the structure chart and the service level agreement, which the CCG now referred to by acronym "SLA text" on 7 November 2019. The document itself was titled 'Service User Provider Agreement for Residential Care (SUPA)' and within that document was referred to by the acronym 'SUPA'. The footnote read 'GPP4 -SLA to Provider for Nursing Home client (SUPA)'. For simplicity the Commissioner will use the term 'SUPA' to refer to this document.
21. On 10 November 2019 the complainant responded to the CCG's email of 7 November. Having scrutinised the SUPA he had been sent, he believed that there were references within it to other contracts and formed the opinion that should be an overarching contract within which the SUPA sat. Therefore, amongst other things, he requested access to that contract in the following terms:

"... Please disclose a proformer* contract which describes the performance terms and conditions under which one assumes the SUPA sits. (* financial information can be removed)."

22. The Commissioner considers that this was in effect a further challenge as to whether he had been provided with all the information on the standard contract which he had requested on 11 September 2019 . As such, it should have been treated as a request for the CCG to conduct an internal review of its handling of that request. However it is apparent that this, together with other elements of his email was being treated as a fresh request, as when his email was acknowledged on 13 November, the matter was assigned a new information request reference number.
23. Upon receipt of that acknowledgement the complainant emailed the CCG on 17 November 2019. In respect of his request of 11 September 2019 for the standard contract, he said that although he had been told, in the Chief Executive Officer's letter of 22 October, that there were no standardised contracts, he reiterated his opinion that the SUPA, he had subsequently been provided with, made a number of references to contracts. He also provided the CCG with a copy of the NHS Standard Contract 2017/18 and 2018/19 – Service Conditions (Full Length), which was first published in November 2016.
24. The Commissioner understands that NHS Standard Contracts are updated on a regular, often annual, basis. They can be accessed on the NHS website where copies of the relevant contracts in use since 2013 can be found. The Commissioner will simply refer to these documents as the NHS Standard Contract. As will become apparent later, there are also shorter form versions of these contracts, the NHS Standard Contract (Shorter Form), which will be referred to as the 'Short Form NHS Standard Contract'.
25. From the above, the Commissioner understands that having located these NHS Standard Contracts, the complainant took their existence to be strong evidence that the CCG should have been using them when commissioning continuing health care for patients with acquired brain injuries. He therefore believed that these contracts would have been captured by his request. If the CCG did not use these contracts, which having visited the NHS website and viewed the contracts, appear to be mandatory, he wished to know why not.
26. On 18 November 2019 the CCG emailed the complainant to say that an internal review was being conducted of his previous information requests which the Commissioner understands to be his requests of 11 August 2019 and 11 September 2019.
27. On 6 December 2019 the CCG emailed the complainant regarding his email of 10 November which it still appeared to be treating as a fresh

request. The CCG advised him that it considered some of the information he was requesting, which the Commissioner interprets as being the proforma contract under which the SUPA sat (as referred to in paragraph 21 above), was held, but that it was exempt under the exemption provided section 43 – commercial interests. The email went onto explain that additional time was required to conduct the public interest test.

28. On 20 December 2020 the CCG provided the complainant with the outcome of its internal review of his requests of 11 August 2019 and 11 September 2019. In respect of his request for the standard contract the CCG stated that although the NHS Standard Contract was publicly available, at the time the CCG responded to his request the Continuing Health Care Team had said it did not use the standard contract and that the only contract used was the SUPA which had been provided (which it referred to in its letter as the “Standard text from the CHC contract”. However the Continuing Health Care Team had subsequently clarified that it did use the “abridged short form NHS Standard Contract” when commissioning services.
29. In respect of the request for the job description for the post of the position now clarified as Job Role X, the internal review upheld its decision that the as the named job description related to one individual, the information would not be disclosed under the FOIA. There was no reference to which exemption under the Act the CCG was relying on to withhold the information. However during the course of the Commissioner’s investigation the CCG clarified that it was relying on section 40(2) of the FOIA – personal information.
30. On 6 January 2020 the CCG provided the complainant with the outcome of the public interest test it had conducted in respect of, what it had treated as, his fresh request of 10 November 2019, i.e. the request for the proforma contract under which the SUPA sat. The CCG advised him that after considering the public interest test, it no longer considered it could rely on section 43 to withhold the information captured by the request and that it was therefore providing the information. It went on to disclose another copy of the SUPA and links to the NHS Standard Contract and the Short Form NHS Standard Contract. The Commissioner notes that the complainant had previously been provided with a copy of SUPA on 7 November 2019 and had himself located copies of the NHS Standard Contract on internet which he had then forwarded to the CCG when arguing that he believed these documents were also captured by his original request of 11 September 2019. The Commissioner also notes that in the CCG’s internal review of that request dated 22 October 2019 he had already been advised that the NHS Standard Contracts were publicly available. The Commissioner understands that the CCG had initially interpreted his request of 10 November 2019 as seeking completed versions of these documents which would have included the

financial arrangements between the CCG and the service provider. The CCG has subsequently advised the Commissioner that it now recognises there is no documentary evidence which suggests the complainant was ever seeking completed contract, or contracts for the care of specific patients.

31. In response to the Commissioner's investigation the CCG provided the complainant with a fresh response to his request for the standard contract. That fresh response was provided to the complainant on 1 July 2020. The CCG's change in position was due to the CCG re-considering its interpretation of the his request. The CCG had initially interpreted the request as being for the contracts that were in use at the time the request was made in 2019. However the complainant has consistently argued to the Commissioner that his request has to be read in the context of his ongoing correspondence with the CCG and the underlying issue to which his request related. When that context is taken into account, he argues that his request should be interpreted as being for the standard contract that was in use when certain events occurred in 2016. When the Commissioner put this to the CCG it did not challenge that the request captured any standard contract that was in use as of 2016.
32. In its letter of 1 July 2020 the CCG stated that it now understood that the request was seeking the proforma contract in use in 2016. The CCG also recognised that his request was not seeking a completed contract and that therefore there had been no need for it to consider whether any information was exempt under section 43 – commercial interests. The emailed letter was accompanied by an attachment labelled 'Copy of the NHS Standard Contract'. The actual document however is one titled 'Confirmation of Commissioned Provision of Care' (CCPC). It is the CCG's position that this CCPC, which is very similar in character to the SUPA, was the only standard contract that it used when commissioning continuing health care in 2016.
33. In its letter of 1 July the CCG maintained its position that the request for the job description of, the role accepted as being, Job Role X, is exempt from disclosure under section 40 – personal information.

Scope of the case

34. The complainant originally contacted the Commissioner on 21 October 2019 to complain about the way his request for information had been handled. During a telephone call with one of the Commissioner's staff on 9 March 2020 he clarified that he considered the SUPA he had by now been provided with should have been provided by the CCG when originally responding to his request of 11 September 2019 and that he was concerned over the length of time that it had taken the CCG to

supply that information. During the Commissioner's investigation he also began to question whether he had in fact been provided with all the relevant information regarding the standard contract. He also extended the scope of his complaint to include the CCG's withholding of the job description for 'Job Role X' under section 40 – personal information.

35. The Commissioner considers that the matters to be decided are whether the CCG is entitled to withhold the job description requested on 11 August 2019 under section 40 and whether it has complied with its obligations under section 1 to provide the complainant with all the information described by his request of 11 September 2019 as the 'standard contract'. The Commissioner will also consider whether the CCG has complied with its obligations under section 10 to provide any information which the complainant is entitled to within 20 working days. The Commissioner will start by considering whether job description can be withheld under section 40.

Reasons for decision

Section 40 - personal information

36. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
37. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
38. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
39. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

40. Section 3(2) of the DPA defines personal data as:

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

"any information relating to an identified or identifiable living individual".

41. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
42. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
43. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
44. The Commissioner's published guidance on section 40 and 'Requests for personal data about public authority employees' states that when the requested information relates only to a post, without reference to an identifiable individual who holds that post, it does not constitute personal data. Therefore, a record that a post with certain responsibilities exists in an authority is not in itself personal data. However, if the post holder is identifiable from that job description, or from the job description and other available data, then this is personal data. For example, if the name and job title of the post holder are shown on the authority's website, then the post itself becomes the personal data of that individual.
45. The CCG maintains that there is only one person holding the post of 'Job Role X', within the CCG. It also argues that the complainant knows the name of that individual through his interactions and correspondence with the CCG.
46. The complainant has challenged whether the individual he knows to fulfil 'Job Role X' is the only officer in that role. Therefore the Commissioner put this question directly to the CCG during a lengthy phone call with three members of staff from the CCG including the Senior Correspondence and Complaints Officer and the Deputy Head of Continuing Health Care. The CCG was adamant that there is only one person in that post. It may be that the complainant has been provided with alternative contacts, or that during any absences another member of staff covered some of their colleague's duties. However, the Commissioner is satisfied that there is only one member of staff employed by the CCG in 'Job Role X' and it is clear that the individual is known to the complainant.
47. Although searches of the CCG's website using the job title have not identified the post holder by name other rudimentary searches of the internet have.

48. In light of these the circumstances the Commissioner is satisfied that the job description both relates to and identifies the post holder. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
49. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
50. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

51. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

52. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
53. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

54. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

55. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test: -
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
56. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

57. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
58. There is a broad legitimate interest in accessing information that would demonstrate a public authority's commitment to openness and transparency.
59. The Commissioner also recognises that the complainant has a legitimate interest in understanding the role and responsibilities of officers within the CCG so that he can better understand how continuing health care for patients with ABI is commissioned, the responsibilities and expected competencies of those involved and to hold the CCG to account for the commissioning of those services. Although the complainant has a particular reason for seeking this information, there is also a wider legitimate interest in the public understanding the role the CCG plays in providing services to vulnerable members of our society and examining its performance.

60. The Commissioner is therefore satisfied that there is a legitimate interest in the disclosure of the information.

Is disclosure necessary?

61. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

62. The Commissioner recognises that if someone was concerned about the services provided by a public authority they would not need the job descriptions of all those potentially responsible for the delivery of the service in order to raise those concerns. However the Commissioner also appreciates that the delivery of NHS services can be very complicated, particularly where the actual care is delivered by the private sector under contracts with the CCG. There is therefore a greater need to understand who is responsible for the individual elements of the process through which the care was organised and delivered. The provision of the job description would certainly assist the complainant in forming a view on where responsibilities lay and how best to address any issues he had with those services.

63. The Commissioner is satisfied that the disclosure is necessary for the complainant to pursue his legitimate interests.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

64. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

65. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

66. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
67. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
68. The Commissioner notes that the job description relates to the individual's professional life and the disclosure is therefore less intrusive than it would be if the requested information related to their personal life.
69. The CCG has previously released certain information about the post holder in an attempt to allay some of the concerns raised by the complainant. The information related specifically to the actual qualifications held by that individual and their experience. This information was provided in the letter of 30 July 2019 (referred to in paragraph 9 above). This level of detail goes some way beyond that which would normally be expected in response to a request under FOIA, however it is understood this information was provided with the consent of the individual in question. The Commissioner understands that the individual has not consented to the disclosure of the job description.
70. The CCG has stated that its standard approach is to only disclose the job descriptions of senior managers. Those of non-senior officers are only disclosed if their role is public facing, or involves significant levels of accountability. As the CCG did not consider 'Job Role X' fitted this criteria it believed the post holder would have no expectation that their job role would be disclosed.
71. The Commissioner is very cautious of accepting this argument. It may be that the CCG's established approach would have influenced the post holder's expectations that the job description would be withheld. However the Commissioner also considers their expectations would be shaped by the information itself. A job description does not reveal anything particularly personal about the holder of that post, albeit it may set out in the broadest terms what that individual is tasked with doing, their seniority and, in very broad terms, their qualifications. But having viewed the job description the Commissioner does not consider the information it contains to be in any way intrusive. Much of the information could be assumed from the job title and the post holder's position on the structure chart which the CCG has also been happy to provide to the complainant, together with rudimentary searches of job sites. It is the sort of information that would be made readily available to applicants applying for such a job, either as a result of the post

becoming vacant, or perhaps as a consequence of the CCG expanding. Certainly within the NHS community there would be an understanding of what the job role encompassed. The Commissioner is not convinced that the average person would consider such a job description to be particularly sensitive. Therefore although, given the CCG's standard approach to the disclosure of such information, the post holder may have assumed the information would not be released, it is not clear that the contents of the information itself would have reinforced that expectation.

72. The CCG has stressed that there is only one post holder and said that the job description is reviewed as required to ensure that it remains current to that employee. The Commissioner does not interpret this to mean that the job description is amended to reflect the personal development of the post holder, but that the job description is reviewed in light in changes required to the particular role which the post holder is fulfilling. The Commissioner remains of the view that the contents of the job description itself would not give rise to an expectation that it could not be disclosed.
73. Although the Commissioner notes that the role in question may not be a senior role within the organisation, it is far from being a junior position. It is one that carries a degree of responsibility and therefore accountability.
74. The CCG has explained that when applying section 40 it took account of the potential distress that disclosure could cause the data subject. It has not explained however what that distress would be. It is important to note the exemption has to be considered at the time the request was made, i.e. in August 2019. It is not clear to the Commissioner that the circumstances at that time would have been very different to those which existed only weeks earlier, when far more personal information about the post holder, including their actual qualifications and years of experience, was disclosed on 30 July.
75. The Commissioner recognises that the information was being requested in relation to concerns the complainant had in respect of the services delivered by the CCG. It might be speculated that the post holder may have felt that they had become the focus of the complainant's concerns and this may have raised the potential for the disclosure to be stressful. The Commissioner recognises the responsibility that the CCG has to safeguard the interests of their employees. However the Commissioner does not consider the disclosure of a job description could undermine the fairness or objectivity with which any concerns raised by the complainant would be considered by the CCG or others. This should minimise the potential for the disclosure to cause stress.

76. The CCG has concluded that it would not be fair to place the job description in the public domain. However it is unclear how disclosing the information to the wider public would be particularly detrimental to the post holder.
77. Having considered the factors bulleted in paragraph 65 the Commissioner finds that the impact on the post holder if the job description was disclosed would be very limited and the Commissioner does not consider the disclosure would be particularly intrusive. There would be very limited interference with their interests or fundamental rights and freedoms.
78. Based on the above, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

Fairness and transparency

79. Even though it has been demonstrated that disclosure of the requested information under the FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
80. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
81. The requirement for transparency is met because as a public authority, the CCG is subject to the FOIA.

The Commissioner's view

82. In this instance, the Commissioner has decided that the CCG has failed to demonstrate that the exemption at section 40(2) is engaged. It is therefore required to disclose the job description.
83. Before leaving the issue of the job description the Commissioner wishes to clarify one further point. The complainant was initially told by the CCG that it did not hold the job description. In the absence of any job description he pursued information relating to whether the post holder was required to be a member of any professional body and if so whether they would therefore be bound by any code of ethics. Presumably this was so that the complainant could better understand how the post holder could be held to account.
84. The CCG has consistently told the complainant that the post holder is not required to be a member of any professional body. Nevertheless the Commissioner asked the CCG directly to confirm whether that was

correct. Furthermore having viewed the actual job description she was provided with the Commissioner noted that, under general descriptions, there was reference to the requirement for the post holder to abide by any professional conduct of conduct relevant to their profession. In response the CCG has confirmed that the post holder is not required to be a member of any professional body and that the reference to the professional code of conduct is simply a standard term included in many of the job descriptions within the CCG; its inclusion does not signify the post holder is required to be a member of a professional body.

85. The Commissioner is satisfied with the CCG's explanation on this point.

Section 1 – duty to communicate the requested information

86. Section 1(1) of the FOIA provides that any person who has made a request to a public authority is entitled to be told:

(a) whether information of the description specified in the request is held, and

(b) if the information is held, to have that information communicated to them.

87. The Commissioner will now consider whether the CCG has complied with these obligations in respect of the request of 11 September 2019 in so far as it relates to the standard contract.

88. The first issue is to establish what information was described in the request. The request of 11 September 2019 is repeated below:

"[FIO-1] Please supply the job description roles and responsibilities of an NHS Funding Commissionaire for Mental Health/Disability service (or General if this covers wider services), along with **any standard contract / service conditions that must be met when entering in to contracts with service providers.**"

[FOI-2] Please supply the functioning description /roles and responsibilities of an NHS Commissioning team for Mental Health /Disability services (or General if this covers wider services), along with **any standard contract / service conditions that must be met when entering in to contracts with service providers.** Please also supply the staffing structure, role titles and numbers of staff required at each role to provide robustness to meet service levels as required by your procedures /NHS contracts."

The relevant parts of the request are highlighted in bold.

89. When considering what information is captured by a request the Commissioner will look at how that request can be objectively interpreted. In doing so the Commissioner recognises that it is possible for there to be more than one objective interpretation of a request. A complainant cannot be expected to have knowledge of all the technical terminology and names used by a public authority when referring to its documents or processes. Therefore although, as revealed earlier, there are contracts known as the NHS Standard Contract and the NHS Standard Contract (Shorter Form), which has been referred to as the 'Short Form NHS Standard Contract' in this notice, the Commissioner does not consider the request is limited to these contracts. Instead the Commissioner considers the request should be interpreted as encompassing any model contract that was commonly used by the CCG when commissioning continuing health care for patients with ABI. This would include any proforma or template contract that the CCG used.
90. In this case the Commissioner understands that the CCG currently adopts a two stage process for commissioning continuing health care. There is an overarching contract, which in effect secures the services of a particular care home and establishes the CCG's requirements in terms of quality of care etc and would include many of the service conditions sought in the request. The CCG has confirmed that this overarching contract is the Short Form NHS Standard Contract. However this contract does not set out the specific requirements of individual patients. Therefore whenever an individual patient is placed with the care home a SUPA (Service User Provider Agreement for Residential Care) is completed. This sets out what level of care that individual patient requires and forms a contractual agreement under which the care home agrees to provide that level of care. The Commissioner understands that the SUPA in effect becomes an annex to the Short Form NHS Standard Contract.
91. Where such an approach is adopted the Commissioner finds that both the overarching contract and the template used when placing individual patients would be captured by the request.
92. The next question when interpreting the request, is what period the request relates to. The most natural reading of a request which seeks a standard contract of this type, is that it is seeking the contract that is in use at the time the request was made. The Commissioner accepts that at the time of the request the CCG was using the Short Form NHS Standard Contract in conjunction with the SUPAs.
93. However the complainant has argued that his request should have been interpreted as seeking the standard contracts that were in place at the time of the events that he is concerned about, i.e. those in place in 2016.

94. The Commissioner has considered the complainant's position. It is clear that the CCG was well aware of the complainant's underlying concerns and that these related to events in 2016. This is recognised in email received by the complainant dated 23 July 2019 which was a response to the complainant email of 26 June 2019 (see paragraph 7 above). Given that his request was made in the context of the ongoing dialogue he was having with the CCG over those events in 2016 the Commissioner is satisfied that the request could be objectively interpreted as being for any standard contracts in place at that time. Although the CCG did not initially interpret the request in this way, when the Commissioner explained the complainant's position to it, the CCG appears to have accepted the complainant's interpretation.
95. Having established that the request was seeking any standard contracts, including any overarching contract, together with any template contracts used when placing individual patients, which were in place in 2016, the Commissioner has gone on to investigate what information was actually held that matched that description.
96. Following the receipt of a detailed submission from the CCG the Commissioner held a telephone conference with officers of the CCG including its Deputy Head of Continuing Health Care. Afterwards a note of the telephone conference was circulated by the Commissioner in order to provide the CCG with the opportunity to confirm the accuracy of the Commissioner's understanding of its position. Following the CCG's providing its comments on the note of the call, one final point of clarification was sought and provided.
97. Having clarified with the CCG that the request sought the contracts that were in place in 2016 the CCG informed the Commissioner that the only standard contract used at that time was the 'Confirmation of Commissioned Provision of Care' (CCPC). The CCG has provided the Commissioner with a copy of that document, the foot note of which identifies it as version 2 and dated from March 2014. The CCG confirmed that this was used up until 2017.
98. The CCPC was used when placing individual patients in care homes and in many ways is similar to the SUPAs which the CCG now uses in conjunction with the Short Form NHS Standard Contract. Therefore it seemed plausible that there would also be some form of overarching contract, under which the CCPC sat in a similar way to which the SUPAs sat under the Short Form NHS Standard Contract. This was put to the CCG and in its response it was very clear that there was no such overarching contracts between itself and the care homes.
99. The CCG went on to explain the way in which the provision of continuing health care had evolved. NHS continuing health care has been the responsibility of CCGs since they were first established in 2013. Before

that it was the responsibility of predecessor organisations such as Primary Care Trusts. Prior to 2007 there was no national framework for providing this care and it was left to NHS organisations to establish local protocols to do so, often with local authorities. The Commissioner understands that in effect from around 2007 much of the continuing health care in West Sussex was provided through the county council, including in private care homes whose services were commissioned by the council. Therefore there were contracts in place between the council and the care homes it used. Over time the county council developed a great deal of expertise in providing and commissioning such care.

100. NHS bodies have the legal authority to enter into agreements with local authorities to manage continuing health care. These agreements are made under section 75 of the National Health Service Act 2006. When the CCG was first established it entered into such an agreement with the county council, under which the county council would commission and provide continuing health care and support the CCG in making decisions as to the eligibility for such care. In this way the CCG could capitalise on the expertise built up by the council. The CCG then placed individual patients in the care homes organised by the county council using the CCPC. The section 75 agreement was entered into in 2013 and lasted until June 2015.
101. It is important to note here that as the section 75 agreement ended in 2015, it is not captured by the scope of the request. In any event, it is a very specific contractual agreement and could not be described as being a 'standard contract'.
102. The CCG came out of the section 75 Agreement in 2015 because by then, as the CCG put it, the CCG had begun its journey to commissioning continuing health care itself. However it was not until 2016/2017 that the CCG appointed its first Head of Service for Continuing Health Care, and it was not until September 2017 that the CCG first commissioned continuing health care using the Short Form NHS Standard Contract.
103. Therefore during the period between the ending of section 75 Agreement and the CCG starting to commission continuing health care itself in 2017 (i.e. entering into its own overarching contracts with care homes), the CCG continued to place patients in care homes originally commissioned by the county council using the CCPC.
104. The complainant has been keen to understand how the CCG was able to provide continuing health care for patients with ABI without using either the NHS Standard Contract or the Short Form NHS Standard Contract which are mandatory when commissioning such care. The CCG accept their use is mandatory, but from the explanations provided, the Commissioner understands that they are only mandatory when the

entering into the high level, overarching, contracts under which individual patients are then placed using documents such as the SUPA. Since the CCG was continuing to piggy-back on the contracts originally established by the county council, it had no cause to enter into one of these overarching contracts until September 2017, at which time it did use the Short Form NHS Standard Contract.

105. The Commissioner directly asked the CCG whether contracts established by the county council were ever transferred to the CCG. The CCG was very clear that the county council's contracts were never transferred to it. There was therefore a gap in the contractual arrangements for providing continuing health care between 2015 and 2017 to the extent that although individual patients were placed in care homes under CCPCs there was no overarching contractual agreement between the CCG and those care homes under which the CCPC sat.
106. Having studied the NHS Standard Contract and the Short Form NHS Standard Contract the complainant is aware that they include service conditions. The following example is taken from the NHS Standard Contract (Full Length) for 2016/2017:

"SC1 Compliance with the Law and the NHS Constitution

1.1 The Provider must provide the Services in accordance with the Fundamental Standards of Care and the Service Specifications. The Provider must perform all of its obligations under this Contract in accordance with:

1.1.1 the terms of this Contract; and

1.1.2 the Law; and

1.1.3 Good Practice.

The Provider must, when requested by the Co-ordinating Commissioner, provide evidence of the development and updating of its clinical process and procedures to reflect Good Practice.

1.2 The Commissioners must perform all of their obligations under this Contract in accordance with:

1.2.1 the terms of this Contract; and

1.2.2 the Law; and

1.2.3 Good Practice.

1.3 The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The

Provider must ensure that all Sub-Contractors and all Staff abide by the NHS Constitution."

107. At one point the complainant had been told by the CCG that only the only contract used to place patients in care homes was the SUPA. This was at the stage where the CCG had interpreted his request as being for the contract in place at the time of the request and before it had recognised the relevance of the, overarching, Short Form NHS Standard Contract to the request. Therefore the complainant was keen to understand whether, in the absence of the use of any NHS Standard Contract, there were any conditions similar to those imposed by the SC1 above which care homes were obliged to comply with.
108. As explained earlier, it has transpired that in 2016 it was the CCPC which was used to place individual patients in care homes rather than the SUPA which superseded it. It has also transpired that at that time the CCG did not have any explicit, overarching, contracts with those care homes. In the absence of any overarching contract between the CCG and the care homes during 2016, the CCG believes that there would in effect be an implicit contract between itself and those providers and that if any provider failed to comply with any reasonable standards, or obligations there would be legal routes available to remedy the problem. Legal advice would have been sought on this issue had the situation ever arisen. The Commissioner understands that as such situations did not arise, no such legal advice was ever required.
109. Finally, in its internal review letter of 20 December 2019 the CCG informed that complainant that it did, now, use the Short Form NHS Contract (see paragraph 28). However when doing so it described the contract as the "abridged short form NHS Standard Contract". The use of the word 'abridged' led the complainant to believe that the CCG had further shortened the Shorter Form NHS Standard Contract. Since he understood that the use of these contract were mandatory he was keen to understand what legal authority the CCG had to shorten it further.
110. The Commissioner is satisfied with the CCG's explanation that its use of the term 'abridged' was simply an attempt to describe the nature of the Short Form NHS Standard Contract, by emphasising that it was a shorter version of the full NHS Standard Contract. The CCG has not attempt to shorten to contract any further. Therefore the question of the CCG's authority to do so, does not arise.
111. In summary, the Commissioner finds that the only standard contract that was used by the CCG in 2016 in respect of the provision of continuing health care for patients with ABI was the CCPC. The CCG has now provided the complainant with a copy of that contract. This was provided on 1 July 2020 (see paragraph 32).

Section 10 – time for compliance

112. Under section 10 of the FOIA a public authority is obliged to communicate any disclosable information to the person making the request within 20 working days of the request being received.
113. By failing to disclose the CCPC in response to the complainant's request for the standard contract of 11 September 2019, until 1 July 2020 the CCG has breached section 10.
114. The Commissioner has also found that job description requested by the complainant in his request of 11 August 2019. By failing to disclose this information within 20 working days of that request being received, the CCG has also breached section 10.

Other matters

115. Although not forming part of the formal decision notice the Commissioner uses the 'Other matters' part of the notice to address issues that have arisen through her investigation of the complaint. The CCG has cooperated fully with the Commissioner's investigation and the Commissioner is grateful for its assistance and timely responses which have helped clarify the various issues that have arisen.
116. The CCG has also recognised that mistakes were made in the handling of the complainant's requests and has identified where the process could have been improved. These include the need to separate out requests for information from an individual's concerns about an underlying issue or complaint, the need to clarify the scope of a request as quickly as possible where there is any doubt as to what information is being sought and it has realised that in this case the complainant's expressions of dissatisfaction as to how his requests were dealt with should have triggered an internal review at an earlier stage.
117. Importantly the CCG has also recognised that problems arose due its inconsistent use of terminology and contracting terms and has said that it will ensure in the future that any responses are understandable to a lay person.
118. The Commissioner welcomes this approach from the CCG.

Right of appeal

119. 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

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

120. 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.

121. 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

Rob Mehan

Senior Case Officer

Information Commissioner's Office

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SK9 5AF