

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2023

Public Authority: Shropshire, Telford and Wrekin
Integrated Care System

Address: Halesfield 6
Halesfield
Telford
TF7 4BF

Decision (including any steps ordered)

1. The complainant has requested information regarding funding requests from Shropshire, Telford and Wrekin Integrated Care System (the Public Authority).
2. The Commissioner's decision is that the Public Authority has incorrectly relied on section 40(2).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information it is relying on section 40(2) of FOIA to withhold.
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. On 6 January 2023, the complainant wrote to the public authority and requested information in the following terms:

"How many Individual Funding Requests did the CCG receive in each of the last three years (2020, 2021 and 2022)

Of the Individual Funding Requests received in each year, how many were approved.”

6. The Public Authority responded on 2 February 2023. It provided some information within the scope of the request, but advised the remaining is exempt under section 40(2).

Scope of the case

7. The complainant contacted the Commissioner 22 June 2023 to complain about the way his request for information had been handled.
8. During his investigation, the Public Authority disclosed the information for 2021 as it was not personal data.
9. The Commissioner considers The Commissioner considers the scope of her investigation to be to establish whether the public authority is entitled to withhold the remaining information under section 40(2) of the FOIA

Reasons for decision

Section 40 personal information

10. 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.
11. 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').
12. 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.

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

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

“any information relating to an identified or identifiable living individual”.

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. The Public Authority has confirmed that the requested information is a number below 5 and if it was to disclose the information, the individual(s) in question may be able to identify themselves(s) or individuals known to the data subject may be able to identify them.
19. The Public Authority explained that if the requested information was disclosed, it may also lead to special category data being identified by a motivated individual.
20. The Commissioner refers back to his guidance² when considering if information is personal data. It is clear from his guidance above that a person must be identified in or identifiable from the information, in order for it to be personal data.
21. The Commissioner must also consider whether people would learn anything new if the requested information was disclosed. In the circumstances of this case, the Public Authority has advised that the individual(s) in question could only be identified by a person who already knew that the individual had made a funding request. Therefore

² [s40 Personal information \(section 40 and regulation 13\) version2.3 \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-data-protection-legislation/s40-personal-information-section-40-and-regulation-13-version2.3)

disclosing this information would not be providing that person with any new information.

22. The Public Authority has indicated that a motivated intruder may be able to take the requested information and identify the data subject and special category data about them. However, it has failed to explain how a motivated intruder, who did not already know which who had made funding requests, could take the requested information and identify the individual(s) concerned. Nor is it clear how, even someone who was already aware that a particular individual had made a funding request, would be able to access any more of that individual's special category data.
23. Having considered the withheld information, the Commissioner is not satisfied that the information is personal data, and it therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA.
24. Based on the above factors, the Commissioner has determined that the public authority has incorrectly relied on section 40(2) and the requested information should be disclosed.

Other matters

25. The Commissioner would like to take this opportunity to remind the Public Authority that while an internal review is not required under FOIA, it is still considered to be good practice.
26. In the circumstances of this case, the Public Authority did not conduct an internal review, which does not demonstrate good practice.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF