

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2024

Public Authority: NHS England
Address: england.foi@nhs.net

Decision (including any steps ordered)

1. The complainant requested information relating to three named, deceased, individuals. NHS England ultimately disclosed some information, denied holding some information, and refused to provide the remainder, citing section 21 (information accessible to applicant by other means) of FOIA.
2. The Commissioner investigated its application of section 21.
3. The Commissioner's decision is that NHS England is entitled to apply section 21.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 16 July 2023, the complainant wrote to NHS England and requested information, regarding three named individuals, in the following terms:

"I would be grateful to receive the following information:

 - Date of initial registration with the NHS
 - Dates of registration district changes
 - Any other names used
 - Any other dates of birth the NHS may hold

- Any other addresses held for the individual”.
6. The request included the name, date of birth, date of death and last known address of each of the individuals concerned.
 7. NHS England responded on 31 August 2023. It stated that, on the balance of probabilities, it did not hold information within the scope of the request.
 8. The complainant requested an internal review on 3 November 2023, in which they requested additional information:

“Could you please confirm that there are no historical index cards held for the individuals mentioned in my request.

Could you also provide me with copies of the right hand page of the 1939 Register for the named individuals. This is a record that NHS England holds. The right hand page is not available to the public, only Column 11. Please provide any information not shown in Column 11 for the individuals mentioned as well as any information in the “POSTINGS” column, Column 12. If there are any continuation entries on another page, please include the right hand page for these.

I believe the “POSTINGS” column also includes the date of death, or at least a death code, along with other codes used by the National Registration Offices and later, the NHS.

I have included the 1939 Register references below to help with your internal review”.

9. Following an internal review, NHS England revised its response on 30 November 2023. It said that, based on the further information provided by the requester, it was able to locate relevant records.
10. It disclosed some information within the scope of the request and denied holding some information. Regarding the information additionally requested, namely the date of death/death codes, it refused to provide that information, citing section 21 (information accessible to applicant by other means) of FOIA.

Scope of the case

11. In correspondence with the Commissioner, the complainant said that they “would like to know the information related to the death of various individuals”. They did not refer to information which the NHS advised that it did not hold, so this point has not been further considered.

12. By way of background to their complaint, the complainant explained that the information they are seeking may be a date of death or recorded in code format, otherwise referred to as the "death code".
13. The analysis below considers NHS England's application of section 21 of FOIA to the information withheld by virtue of that exemption.

Reasons for decision

Section 21 information accessible to applicant by other means

14. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
15. The overall purpose of section 21 is to remove information which an applicant can access via another route from the general right of access under section 1.
16. When relying on section 21(1) to refuse a request on the basis that the information is publicly available, a public authority must show that:
 - the information in the public domain matches what the applicant asked for;
 - precise directions have been given to the applicant to enable them to find it without difficulty and without a great deal of searching necessary to locate it; and
 - the particular circumstances of the applicant and whether they can reasonably access the information are satisfied.
17. NHS England explained to the complainant that information in relation to the place and date of death of an individual is available via the General Registration Office (GRO). They provided the complainant with a link to the GRO's certificate application process.
18. The Commissioner understands that the GRO "holds records for all births, marriages, civil partnerships, and deaths registered in England and Wales from 1 July 1837"¹.

¹ <https://www.gov.uk/government/publications/discover-your-family-history/discover-your-family-history-accessible->

19. In its submission to the Commissioner, NHS England confirmed that death registration information is available via the GRO and that death certificates can be ordered from the GRO. It acknowledged that there is a charge for this information.
20. The Commissioner recognises that the GRO website states:

“You can order birth, adoption, marriage, civil partnership and death certificates from the General Register Office (GRO)”.
21. With regard to there being a charge for information accessed via the GRO, the Commissioner accepts that his guidance ‘Information in the public domain’² states:

“Information may also still be considered as being in the public domain even though access is subject to the payment of a fee”.
22. The Commissioner considers it is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public, until it becomes aware of any particular circumstances or evidence to the contrary.
23. In this case, the Commissioner recognises that the complainant is able to use the internet and email as they made their request electronically. Nor is he aware that they have raised any reasonable adjustment requirements.
24. The Commissioner is therefore satisfied that section 21 is engaged. As this is an absolute exemption there is no requirement to consider the public interest in this matter.

[version#:~:text=The%20historical%20birth%20and%20death,index%20from%201837%20to%201983.](#)

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/information-in-the-public-domain/#istheinformation>

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
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