

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2024

Public Authority: Cardiff and Vale University Health Board

Address: Woodland House
Maes-y-Coed Road
Cardiff
CF14 4HH

Decision (including any steps ordered)

1. The complainant has requested information from the Cardiff and Vale University Health Board (‘the Health Board’) regarding a specific service concern, the name of a specific member of staff and policy information
2. The Commissioner’s decision is that the Health Board should have relied on section 40(1) of FOIA when refusing to provide the requested information as it was the requester’s own personal data. The Commissioner has applied this exemption himself, proactively to prevent disclosure under FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 12 April 2024, the complainant wrote to the Health Board and requested information in the following terms:

“1. A copy of the notes made by [named individual] following my meetings with him on 3rd April 2023 and 17th April 2023, where I raised concerns regarding the legality and safety of the Cardiff Dyfodol Service.

2. An explanation as to who is the CD Accountable Officer for the Cardiff and Vale Dyfodol service commissioned by the Area Planning Board.
3. Any policies which set out the governance mechanism for ensuring compliance with health related legislation within the commissioned Dyfodol service.
4. Any documents relating to the actions which were taken in response to the concerns I raised to [named individual] in April of 2023, to include minutes of meetings held, and reports of any inspections undertaken and any subsequent recommendations and any actions that were taken."
5. The Health Board responded on 7 May 2024. It disclosed part of the requested information, advised that some of the information was not held and refused to provide the remaining information citing sections 40(2) and 31.
6. The Health Board did not conduct an internal review.

Reasons for decision

Section 40(1)– personal data of which the applicant is the data subject

7. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
8. The Commissioner's guidance is clear that a requestor's own personal data should not be disclosed under FOIA or the EIR. Instead, public authorities should handle this aspect of the request as a subject access request (SAR) under the UK GDPR or the DPA, as applicable.
9. This reasoning covers why the Commissioner has determined that the requested information is the complainant's personal data and therefore, exempt from disclosure under section 40(1) of FOIA.
10. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual."
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. 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.

13. 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.
14. The Commissioner has viewed the request and is satisfied that it is information which relates to, and identifies, the complainant. The complainant has clearly asked for his own information in the request using terms such as "my meeting" and "where I raised concerns". In order for the Health Board to locate this information, it must have used the complainant's identity to identify the information that would fall within scope. The Commissioner has determined that disclosing this information under FOIA would identify and reveal personal information about the complainant.
15. The Commissioner's conclusion is that the information is the complainant's own personal data and it is exempt from disclosure under section 40(1) of FOIA.
16. As the Health Board has not applied this exemption, the Commissioner has applied it himself, proactively, to prevent the information from being disclosed under FOIA.
17. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest. He is also not required to consider whether or not the complainant would be content to have their personal data disclosed to the world at large.

Other matters

18. Despite having raised the possibility that the information might be the requester's own personal information at the outset of his investigation, the Commissioner notes that the Health Board stated that it had not and did not need to, consider the request under data protection legislation.
19. Whilst he cannot require it to do so in a decision notice issued under FOIA, the Commissioner would strongly recommend, in light of the conclusion above, that the Health Board now re-consider the request as a subject access request and respond in accordance with that legislation.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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