

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2024

Public Authority: Devon Partnership NHS Trust
Address: Wonford House Hospital
Dryden Road
Exeter
Devon
EX2 5AF

Decision (including any steps ordered)

1. The complainant has requested a copy of a Data Protection Impact Assessment ('DPIA'). Devon Partnership NHS Trust ("the public authority") disclosed a redacted copy of the DPIA, with redactions made under section 31(1)(f).
2. The Commissioner's decision is that the majority of the withheld information engages section 31(1)(f) and the public interest lies in maintaining the exemption. However, there's information that's been withheld that doesn't engage the exemption and therefore must be disclosed. In failing to disclose all non-exempt information within the statutory timeframe, the public authority has breached section 10 (timescale for compliance) of FOIA. The public authority's refusal also failed to comply with section 17 (refusal notice) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information identified in this decision notice.
4. The public authority must take these steps within 30 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 3 April 2024 the complainant made the following request for information under FOIA:

"I would like to request a copy of any Data Protection Impact Assessments the Trust has relating to the use of Oxevision or other Oxehealth technology by Trust staff. If it is not clear from the documents themselves, please state the approximate dates when they were last updated and when they were last reviewed."

6. The Trust responded on 5 April 2024 and disclosed a copy of a DPIA.

7. On 5 April 2024 the complainant reminded the public authority that they'd queried what date any DPIA was last updated and reviewed. They also raised concern that the DPIA didn't relate to the use of Oxevision or Oxehealth technology.

8. On the same day the public authority disclosed another DPIA, this time relating to the use of Oxevision or Oxehealth technology.

9. The complainant then asked the public authority to clarify whether any information had been redacted from the DPIA.

10. The public authority responded and confirmed that:

"We have provided the requested DPIA documents relating to your Freedom of Information request and deem that your follow-up questions are general question, therefore not covered by FOI.

We will be closing your original FOI request as completed and if you could reply to this email with the general questions you have relating to this, we will direct them to our DPO."

11. The complainant requested an internal review on 10 May 2024, querying the date the DPIA was last updated and reviewed and under what exemption any information had been redacted.

12. On 31 May 2024 the public authority confirmed information 'relating to technical Security issues' had been redacted from the DPIA but failed to cite an exemption. It confirmed the DPIA was last reviewed and updated in March 2023.

13. On 31 May 2024 the complainant once again asked the public authority to confirm under what exemption they were redacting information.

14. The public authority provided its final response on 10 June 2025. It cited section 31(3) which is the neither confirm nor deny provision under the

law enforcement exemption but it's response explained why it didn't consider it could release the redacted information.

Scope of the case

15. The complainant contacted the Commissioner on 13 June 2024 to complain about the way their request for information had been handled.
16. During this investigation, the Commissioner explained to the public authority that he believed section 31(3) had been applied inappropriately in this instance as the public authority had confirmed the existence of the risk information by confirming it had been redacted from the DPIA. Also, the very nature of a DPIA is to assess the impact and risk of the processing of personal data, so confirming the DPIA covers such information in itself, without revealing the content of any risk analysis, wouldn't engage section 31(3).
17. The public authority confirmed to the Commissioner that it was relying upon section 31(1)(f) to withhold the redacted information.

Reasons for decision

Section 31 – law enforcement

18. Section 31(1)(f) of FOIA states:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.”

19. The term “security and good order” includes, but is not limited to, both external and internal security arrangements. It will also protect any information likely to undermine the orderly running of these institutions from disclosure.
20. The “other institutions” referred to includes secure hospitals. The public authority has explained to the Commissioner that ‘Devon Partnership Trust utilise the Oxhealth solution in the additional care area’s (formally known as seclusion) in our Dewnans centre.’

21. The Dewans centre website¹ describes it as 'part of our secure services - where we provide medium secure accommodation for men with mental health needs.'
22. The Commissioner has looked at the information the public authority is withholding under section 31(1)(f). He agrees with the public authority, the majority of this information 'would likely reveal a weakness to the security of the information being captured by the system, which includes health information and recorded footage of mental health clients.'
23. If these weaknesses can be exploited, it leaves the Oxevision system vulnerable to hacking and attack. If this occurs, this is bound to affect the running, maintenance and good order of the centre.
24. However, the Commissioner isn't convinced all of the withheld information engages the exemption. The DPIA breaks down the specific weaknesses of the Oxevision system and addresses the risks and mitigating options associated with each. However, there's also an entry that just covers the high level risk of the system itself and the public authority has already disclosed the majority of this information.
25. There's only a small difference between the 'Oxevision system' information that's been disclosed and what's been withheld. However, looking at this information, the Commissioner doesn't see how it could make the system, or the centre, any more susceptible, or less likely to react, to an attack. It's too high level and obvious for that, and so this information must be disclosed.
26. For every entry bar the 'Oxevision system' entry, this information does engage section 31(1)(f), so the Commissioner will now go onto consider where the balance of the public interest lies.

Public interest test

27. There is a clear public interest in mitigating instances of crime. Both organisations and individuals can be victims of crime and, in this instance disclosure would be likely to have a knock on effect from one to the other. Although there is a public interest in protecting both, there is a greater public interest in protecting people from the impact of crime – particularly the vulnerable like those who are treated by the Dewnan's centre.
28. The public authority has explained to the Commissioner that it 'will routinely receive communication from third parties asking information,

¹ [Dewnans Centre | DPT](#)

location and current information about an individual within the institution, who they came into contact with', which persuades the Commissioner that the hacking of Oxehealth is a realistic possibility, the consequences of which would be significant.

29. There's a public interest in transparency from public authorities, especially how it assesses risk when it comes to the processing of sensitive personal data². Disclosure of the withheld information would assure the complainant that all risks have been identified and assessed.
30. At the time of raising their complaint with the Commissioner, the complainant expressed concern that the public authority's 'public interest test failed to take into account the specific circumstances of this case.' The complainant didn't elaborate on this, so the Commissioner can't take these specifics into account.
31. The Commissioner notes Oxehealth is a vision based patient monitoring and management system and with this type of technology comes the need for robust risk analysis, especially when it comes to the processing of the sensitive personal data of vulnerable groups.
32. However, in this instance the Commissioner is satisfied the public interest in the requested information has largely been met by the disclosure of the DPIA itself, without disclosing information which would be likely to make the system more vulnerable to attack.
33. To be clear, only the information that engages section 31(1)(f) can be withheld. This is every entry and its options on the risk assessment, except the entry titled 'Oxevision system'. The entry titled 'Oxevision system' doesn't engage the exemption, so must be disclosed.

Procedural matters

34. Section 10 of FOIA states that non-exempt information must be communicated to a requestor within twenty working days. With the delay in disclosing the date that the DPIA was last updated, and failing to disclose all non-exempt information within twenty working days, the public authority breached section 10.
 35. If a public authority is refusing to provide information, or refusing to confirm or deny whether the information is held, in accordance with section 17 (refusal notice) of FOIA, it must specify the exemption it's relying upon and, if it wouldn't otherwise be apparent, why the
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² [Oxehealth: developing a better way to care for dementia patients - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

exemption applies. The public authority's response of 5 April 2024 and 31 May 2024 failed to cite an appropriate exemption, despite repeated prompts from the complainant, and so fails to comply with section 17.

Other matters

36. The Commissioner notes that the first DPIA that the public authority disclosed contained the personal data of staff members. This information should have been redacted under section 40(2) (personal information).
37. The Commissioner also notes that the public authority didn't redact information from the DPIA in order to disclose it. The public authority altered the DPIA by removing the exempt information and inserting an example 'risk' to demonstrate the type of information it's removed, rather than redacted, from the DPIA.
38. When responding to FOI requests, any exempt information needs to be redacted using redaction software, rather than deleted. Paraphrasing requested information, or deleting it, classes as altering requested information and, if this is done with the intent of preventing it being disclosed, is an offence under section 77 of FOIA.
39. The Commissioner is satisfied the public authority hasn't removed any information deliberately to prevent it being disclosed, the majority of the information has been appropriately withheld under section 31(1)(f). However, the Commissioner must stress the importance of not editing the requested information whatsoever, except for the use of redaction software.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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