

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: NHS Cheshire and Merseyside Integrated Care Board

Address: No 1 Lakeside
920 Central Park
Warrington
WA1 1QY

Decision (including any steps ordered)

1. The complainant has requested information about the staff responsible for the Continuing Healthcare ('CHC') Service in Liverpool. NHS Cheshire and Merseyside Integrated Care Board ('the ICB') provided some information on staffing but relied on section 40(2) of FOIA (third party personal information) to withhold details of staff names, phone numbers and email addresses. In regards to the requested staff structure, the ICB stated that it does not currently hold this information but it intends to publish its new staff structure once agreed.
2. The Commissioner's decision is that the ICB was entitled to rely on section 40(2) to withhold the requested information relating to staff names and contact details. However, he also finds that, on the balance of probabilities, the ICB does hold information relating to the requested staff structure.
3. The Commissioner requires ICB to take the following steps to ensure compliance with the legislation:
 - Carry out searches to determine if it holds a previous version of the CHC staff structure that would satisfy this part of the request, and issue a new response to the complainant.
4. The ICB 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. The complainant wrote to the ICB and requested information in the following terms:

“Please will you provide the structure, names, job titles and contact details of the ICB staff responsible for CHC in Liverpool.”

6. The ICB responded on 11 June 2024. It advised that it did not hold a document detailing its CHC team structure. The ICB instead provided details of job titles and staff numbers for the CHC service in Liverpool and Sefton. With regards to the names and contact details of staff, the ICB advised that it was relying on section 40(2) of FOIA (third party personal information) to withhold this part of the requested information.
7. Following an internal review the ICB wrote to the complainant on 22 July 2024. It maintained its reliance on section 40(2). It also advised that an exercise was underway to determine the new structure of the CHC service, and that the ICB anticipated the new structure would be made publicly available once agreed.

Scope of the case

8. The complainant contacted the Commissioner on 22 July 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the ICB was entitled to rely on section 40(2) to withhold the requested information about staff contact details. He will also consider whether, on the balance of probabilities, the Trust holds the requested staff structure.

Reasons for decision

Section 40(2) – personal information

10. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

11. Section 40(3A) of FOIA 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, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).

Is the information personal data?

12. Section 3(2) of the Data Protection Act 2018 defines personal data as:

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

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.
15. The complainant has requested information concerning the names, contact details and job titles of staff responsible for the ICB's CHC service. The Commissioner is satisfied that such information constitutes personal data.

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

16. In the case of a request under FOIA, 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.
17. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
18. 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 child¹”

¹ 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”.

19. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under 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.
20. 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

21. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
22. The complainant has not indicated any specific legitimate interests in support of disclosure of the withheld information. However, in their request for internal review they stated: "I am not happy that a public body like CMICB cannot live up to the NHS ethos of openness/ transparency and share with me: the structure/names/job titles/email addresses/telephone numbers of the people publicly funded by the taxpayer to implement the National Framework for CHC in the Liverpool area."
23. The Commissioner must therefore assume that transparency is the complainant's interest.

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 UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

Is disclosure necessary?

24. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
25. The complainant is seeking the names, job titles and contact details of CHC staff. The Commissioner is not convinced that the legitimate interest of transparency necessitates the publication of the names and contract details of junior staff members.
26. The ICB has explained that individual staff names and direct contact details would only be shared by them with patients and family members who have a legitimate requirement to contact them as part of service delivery. CHC staff complete assessments and make decisions which impact on the care and funding provided to patients. This can sometimes result in dissatisfaction, grievance and anger, and occasionally has resulted in threats made to staff.
27. The ICB added that it has protocols in place for dealing with appeals and a complaints process, details of which are publicly available on its website and also provided to patients.
28. The Commissioner considers that the individuals involved would have a reasonable expectation that their personal information would not be published. Publication of this information would therefore be contrary to the data subjects' reasonable expectations and would be likely to cause them distress.
29. In the circumstances, the Commissioner doesn't consider that disclosing the withheld information is necessary to meet the legitimate interest of transparency.
30. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interests, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing. It therefore doesn't meet the requirements of the principle under Article 5(1)(a).
31. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to consider separately whether disclosure would be fair or transparent. The Commissioner's decision is that the ICB is entitled to withhold the information concerning staff names and contact details under section 40(2) of FOIA.

Section 1 – information not held

32. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled –

“(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

33. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request; this does not extend to the right to ask questions, or for explanations, clarification of information or to debate the contents of information, unless the answer to those questions, requests for explanation or clarification is already held by the public authority in recorded form. Essentially, public authorities are not obliged to ‘create’ new recorded information in order to comply with a request.

34. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

35. In its response to the complainant, the ICB stated that it does not hold a document detailing the structure of the current CHC service for Liverpool and Sefton. It explained that the CHC service in Liverpool and Sefton is about to undergo a change management exercise, following the merging of staff from other providers into the service. It explained that the process had been delayed but it anticipated that it would be completed by December 2024. It added that once agreed, the new service structure would be made available to the public.

36. The Commissioner can understand why the ICB considers that it doesn't hold the requested structure due to its service redesign work. However, he finds that it is likely that the ICB does hold a staff structure for the CHC service even if it doesn't reflect the most recent changes in teams and staffing.

37. In the Commissioner's guidance on 'Determining whether we hold information'² he explains that, at its most simple level, information can be said to be held if a public authority “holds the building blocks

² [Determining whether we hold information | ICO](#)

required to generate it and no complex judgement is required to produce it". The ICB has already provided the complainant with staff numbers and job titles which demonstrates that it holds information in scope of this part of the request. Therefore, it is reasonable to assume that it also holds a version of the CHC service structure that was in place prior to its service redesign work.

38. The Commissioner therefore concludes that, on the balance of probabilities, the ICB does hold recorded information concerning this part of the request.
39. The ICB should therefore carry out searches to determine if it holds a previous version of the CHC staff structure that would satisfy this part of the request, and issue a new response to the complainant.

Right of appeal

41. 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

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

Keeley Christine
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