

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 January 2015

**Public Authority:** Bromley Clinical Commissioning Group  
(NHS South London Commissioning Support Group)

**Address:** 1 Lower Marsh  
London, SE1 7NT

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a report generated following a complaint made by a third party
2. The Commissioner's decision is that Bromley Clinical Commissioning Group (BCCG) was correct to neither confirm nor deny whether the requested information was held under section 40(5) of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 19 June 2014, the complainant wrote to BCCG and requested information in the following terms:

*"in connection with a document sent to [redacted] by the Bromley Clinical Commissioning Group (BCCG) titled: '[REDACTED] RESPONSE [REDACTED]. EVIDENCE PROVIDED ON 1) That you continually raise further concerns or questions that are a repetition of issues that the CCG has already dealt with. 2) That you have continually raised further concerns further concerns or questions about the same issues upon receipt of an adequate response from the CCG.*

*The information required is:*

1. *The name and position of the person at the BCCG who authorised this document to be produced?*
2. *The name and position in the BCCG of the person or persons in the BCCG who produced and compiled this document?*
3. *As the Governing Body are all responsible for the actions of the BCCG under the Nolan Principles, were members aware of, and agreed to the production of the document? If so – their names and position?*
4. *Did Governing Body members approve of the final document sent to [redacted]? If so their names and position?*
5. *What was the cost of producing the document? Separately as:*
  - a) *in staff time, locating and assembling the original papers?*
  - b) *in staff time compiling the summary schedules from the original papers?*
  - c) *Printing and binding the two part document?*
6. *How many of these documents were produced? Who authorised the number? Who received copies? – name and position in the BCCG?*
7. *Who authorised that this document be sent to [redacted]? Name and position?*
8. *The document includes references to the Health and Well Being Centre (HWBC) being promoted by the BCCG and states that three GP practices 'which are in sub-standard accommodation' will be relocated to this. Provide the names of the three GP practices concerned and the addresses of the sub-standard accommodation?*

*Please ensure that all questions are answered individually and not amalgamated as this would not be acceptable if challenged."*

5. BCCG responded on 11 July 2014. It refused to confirm or deny that the information requested at parts 1-7 was held but cited section 40(2) of the FOIA as its basis for doing so. With regard to part 8 of the request, BCCG advised this was already in the public domain, however, it provided this information to the complainant.
6. Following an internal review BCCG wrote to the complainant on 20 August 2014 and maintained its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 2 September 2014 to complain about the way his request for information had been handled.

8. Following correspondence with the Commissioner, BCCG issued a further response to the complainant advising that it wished to cite section 40(5)(b)(i) of the FOIA rather than section 40(2).
9. The Commissioner considers the scope of this case to be to determine if BCCG was correct to neither confirm nor deny the information requested at parts 1-7 was held.

## Reasons for decision

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10. Section 40(2) of FOIA provides an exemption for information that constitutes the personal data of third parties:

"Any information to which a request for information relates is also exempt information if -

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

11. Section 40(3)(a)(i) of the Act states that:

*"The first condition is -*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene -*

*(i) any of the data protection principles, or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"*

12. Section 40(5) states that:

*"The duty to confirm or deny -*

*(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*

*(b) does not arise in relation to other information if or to the extent that either -*

*(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded.*

13. BCCG explained to the Commissioner that, if held, the information would be considered third party personal data. This is because it would indicate that a complaint had been made. If this was disclosed to the public it would be in breach of the DPA. BCCG considered it would breach principle 1 of the DPA.
14. The complainant considers that if a third party has given consent for the information to be disclosed then BCCG should do so.
15. Principle 1 of the DPA states:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -*

*(a) at least one of the conditions in Schedule 2 is met "*
16. Although one of the conditions in Schedule 2 may be met by one party giving consent, consideration must also be given to all the parties concerned.
17. In this case, if the information was held, there would be a number of other parties involved and not just the person who has given consent. Although the complainant considers that providing costing information is not personal data, the act of providing costs would confirm information was held. This would therefore by default confirm that a complaint had been made and disclose third party personal data.
18. The Commissioner accepts that parts 1 to 7 of the requested information would, if held, be third party personal data and would be exempt from disclosure on the basis of section 40(2) as it would be unfair to confirm or release details of any party's involvement in such matters. Accordingly the BCCG is not obliged to confirm or deny whether it holds any of the requested information under FOIA by virtue of section 40(5)(b)(i).
19. Having considered all the arguments presented the Commissioner therefore finds that BCCG was correct to cite section 40(5)(b)(i) in response to the request.

## **Other matters**

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20. The Commissioner notes that the response provided to the complainant fell short of the standards required as it failed to quote the correct part of section 40. In addition, the further response cited the correct exemption but failed to explain what that exemption was and why it considered it applied.

## Right of appeal

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21. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**