ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **14 October 2019**

Public Authority: **Dr Charles Harris, Dr Ivy Chan, Dr Reveena Benney, Dr Kirsty Dodwell, Dr Asim Nawaz, Dr Susan Holmes – partners at Barbourne Health Centre**

Address: **44 Droitwich Road**
Worcester
Worcestershire WR3 7LH

Decision (including any steps ordered)

1. The complainant has requested information associated with its data protection officer. Barbourne Health Centre ('the Practice') has released some information, having originally withheld some of it under section 40(2) of the FOIA (personal data). It withheld other information under section 41 (information provided in confidence). The complainant has confirmed to the Commissioner that he is not satisfied that the Practice has released all the information it holds with regard to part 3 of his request.

2. The Commissioner's decision is as follows:

   - On the balance of probabilities, the Practice has now communicated to the complainant all the information it holds that falls within the scope of part 3 of the request. The Practice breached section 1(1) and section 10(1) because it did not communicate to the complainant all the information to which he was entitled within the statutory time frame of 20 working days.

3. The Commissioner does not require the Practice to take any remedial steps.

4. The Commissioner notes that Barbourne Health Centre itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

5. On 28 February 2019 the complainant wrote to the Practice and requested information in the following terms:

   "1. The signed version of the contract. It is evident he is your DPO and the method by which the service was offered.

   *2. All documented communication with SW healthcare/ [*name redacted] *data protection service surrounding the taking up of the offer*

   3. Written evidence of vetting which you undertook to ensure the service provider was a fit and proper person/company to provide the service and had the qualifications/professional status claimed.

   4. Any internal memoranda of any form (eg practice meeting minutes) and communication with outside bodies such as (but not confined to) the CCG or SW Healthcare subsequent to it becoming known privately/publicly that [name redacted] *was not a Solicitor."*

6. The Practice responded on 20 February 2019. It withheld the information requested at parts [1] and [2] of the request under section 41 of the FOIA.

7. With regard to part 3, the Practice said that in terms of vetting companies with which it contracts, it considered that a contract value of less than £500 required minimal due diligence. It advised that it would not be appropriate to investigate the qualifications of an individual employed by a company providing a service to it, where there was no requirement for the qualification to be held by that person. The Practice said it was withholding relevant information it holds – concerning the qualifications of the individual concerned – under section 40(2).

8. The Practice released information within the scope of part 4; namely, particular correspondence circulated by PCIG Consulting Ltd on 5 November 2018. The Practice's response to the complainant seems to suggest that a verbal discussion about this email was then had on 20 November 2018.

9. The complainant requested an internal review on 21 February 2019, with regard to the Practice's response to parts 1 and 3 of his request.

10. Following an internal review the Practice wrote to the complainant on 20 March 2019. It maintained its reliance on sections 41 and 40(2) to withhold the information requested in the above parts.

11. On 20 August 2019, the Practice released to the complainant information falling within the scope of parts 1 and 3 of his request; namely a signed document entitled '*Governance Support for GP Practices*'. It also released a degree certificate and qualification certificates associated with the individual named in the request.

Scope of the case

12. The complainant contacted the Commissioner on 21 March 2019 to complain about the way his request for information had been handled; confirming on 24 July 2019 that the focus of his complaint was the Practice's response to parts 1 and 3 of his request.

13. Following the release of certain information on 20 August 2019 the complainant confirmed that he remained dissatisfied. However, his concern appeared to focus on the Practice's release of individuals' personal data – that of the person named in the request and their spouse. He considered a breach of the General Data Protection Regulation may have occurred. After a lengthy correspondence with the Commissioner the complainant accepted that the Commissioner would not be considering that matter; first because it appeared to her that no breach had occurred as the individual concerned had consented to the information's release and second, the Commissioner can consider only FOIA matters brought to her under section 50 of the FOIA.

14. In subsequent correspondence the complainant confirmed that he remains dissatisfied with the Practice's response to part 3 of his request.

15. The Commissioner's investigation has focussed on whether the Practice's response to part 3 of the complainant's request complies with section 1 and section 10 of the FOIA.

Reasons for decision

Section 1 – general right of access to information held by public authorities / Section 10 – time for compliance with request

16. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to him or her if it is held and is not exempt information.

17. Section 10(1) of the FOIA requires an authority to comply with section 1(1) as soon as possible and within 20 working days following the date of receipt of a request.

18. The complainant has told the Commissioner that in its internal review response, the Practice had advised: "*The qualifications of an individual are personal data as such are not disclosable under FOIA as* [name redacted] *has a right to privacy, the practice would need to state if due diligence was conducted.* [Name redacted] *has* ***now*** [complainant's emphasis] *provided the practices with copies of his qualification in CONFIDENCE which are not to be shred* [sic] *as practices have had the opportunity to review those*." This suggested to the complainant that the Practice had not held the education and qualification information at the time of his request.

19. However, in its response to the complainant the Practice indicated that it held information falling within the scope of the request – concerning the qualifications of the individual concerned – and it withheld that information under section 40(2). It went on to release the information – the education and qualification certificates - on 20 August 2019.

20. The Practice's position is that it has now released to the complainant all the information it holds that falls within the scope of part 3 of the his request and holds no further relevant information.

21. Part 3 of the request is for written evidence of vetting that the Practice undertook to ensure a particular "service provider" was suitable.

22. In an initial submission on 8 August 2019, with regard to part 3 the Practice said that it did no vetting and that this was undertaken on its behalf by a company called SW Healthcare.

23. In its response to the complainant, and in a submission to the Commissioner on 9 September 2019, the Practice advised that in terms of vetting companies with which it contracts, it considered that a contract value of less than £500, as in this case, required minimal due

diligence. As above, the Practice had advised that it would not be appropriate to investigate the qualifications of an individual employed by a company providing a service to it, where there was no requirement for the qualification to be held by that person. This appeared to contradict the position it gave on 8 August 2018.

24. The Commissioner asked the Practice to clarify its position and to detail to her how it could be sure that it holds no recorded information falling within the scope of the request; no emails, or minutes for example in which any vetting of the individual concerned was discussed. She advised that if SW Healthcare holds relevant information on the Practice's behalf then that information would fall under the scope of the FOIA.

25. On 3 October 2019 the Practice confirmed that it holds no further relevant information and any relevant information it holds has already been provided to the complainant. Pressed for further detail by the Commissioner, on 9 October 2019 the Practice wrote to the Commissioner again. It said it had checked the systems and the storage of records for the Practice and could confirm that it has supplied all the information it holds in regards to the request.

26. The Practice also said that its Practice Manager and Business Manager had checked their emails to see if either of them received any other information not already provided. The Practice confirmed that it could find no other correspondence. It says it has also checked on the portal system where minutes of its Practice Managers Meetings are held and can find no other information with regards to this part of the request.

Conclusion

27. The Commissioner has taken account of the following factors:

- The Practice held education and qualification information at the time of the request. This information broadly falls within the scope of part 3 of the request and the Practice has released this to the complainant.

- The Practice does not carry out a formal due diligence process for contracts under £500, such as the contract in this case.

- Appropriate Practice staff have undertaken adequate searches for any other relevant recorded information it may hold.

- Given the size of the authority and value of the contract it is not unreasonable to assume that vetting-related discussion may have taken place verbally, without being recorded.

28. Having considered all the circumstances, at this point the Commissioner is satisfied that, on the balance of probabilities, the Practice has released to the complainant all the information it held at the time of the request, holds no further information relevant to part 3 and has complied with section 1(1) of the FOIA.

29. However, the complainant submitted his request on 28 February 2019 and the Practice did not release the education and qualification information until 20 August 2019. The Practice therefore breached section 10(1) of the FOIA on this occasion.

Right of appeal

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

31. 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.

32. 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
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