

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2025

Public Authority: Nottingham and Nottinghamshire Integrated Care Board

Address: Sir John Robinson House
Sir John Robinson Way
Arnold
Nottingham NG5 6DA

Decision (including any steps ordered)

1. The complainant has requested information about internal investigations, including a request for information about fraud investigations.
2. The Commissioner's decision is that Nottingham and Nottinghamshire Integrated Care Board ('the ICB') incorrectly withheld information under section 40(2) of FOIA, which concerns personal data. The ICB complied with section 16(1), which concerns advice and assistance.
3. The Commissioner requires the ICB to take the following step to ensure compliance with the legislation:
 - Disclose to the complainant the information they requested in part 1 of their request.
4. The ICB must take this step 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 5 August 2024, the complainant wrote to the ICB and requested information in the following terms:

- "1. Between 1 August 2022 and 31st July 2024, how many people who work or worked for the ICB during this time period have been investigated formally or informally for fraud or fraud-related activity?
2. Between 1 August 2022 and 31st July 2024, how many people who work or worked for the ICB during this time period have been investigated formally or informally for their use of social media?"
6. The ICB responded on 15 August 2024. In respect of part 1 of the request, it said it that it had investigated five or fewer individuals. In respect of part 2, it said it hadn't investigated any of its employees for their social media use.
7. Following an internal review the ICP wrote to the complainant on 10 September 2024. It maintained its reliance on section 40(2) of FOIA to withhold the specific number relevant to part 1 of the request.

Reasons for decision

8. This reasoning is focussed on the ICB's application of section 40(2) of FOIA to part 1 of the complainant's request. The complainant also considers that the ICB should have offered them advice and assistance and so the Commissioner will consider that matter.
9. Under section 40(2), information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
10. The Commissioner has first considered whether the information the ICB is withholding under section 40(2) can be categorised as other people's personal data.
11. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
12. The information that the ICB is withholding is the exact number of employees that it has investigated for fraud, or "fraud-related" activities. It has given the number to the Commissioner, and he asked the ICB to explain how it would be possible for a specific person or people to be identified if the number were to be disclosed.
13. In its submission, the ICB outlined examples, given below, of internal information that someone within the ICB could already know, or could seek out if they were sufficiently motivated to do so. When combined

with the withheld number, the ICB considers that this may identify the person or people who have been, or are being, investigated:

- The ICB's Local Counter Fraud Progress Reports. These include details of fraud and potential fraud related activity and investigations. These are presented to the ICB's Audit and Risk Committee and, as such, are accessible by all those who attend and administer these meetings. Information is also shared with the ICB's Director of Finance and Counter Fraud Champion. These documents can reference ongoing or completed investigations. General information about the nature of investigations could allow someone to correlate the number of investigations with known staff members.
 - Minutes from the above Audit and Risk Committee meetings, where Local Counter Fraud updates are provided.
 - Internal records relating to the fraud investigation, such as initial reports, investigation summaries, or conclusions. Even if these don't disclose [the names of] specific individuals, certain details within these documents might hint at or narrow down the pool of potential individuals investigated, particularly if the investigations are related to specific roles or departments.
 - The ICB's internal Workforce Reports, which can include details of staff sickness, disciplinarys and wider employment case activities.
 - Internal communication, such as emails or internal memos, that discuss the fraud investigations. If any staff members are aware of who was involved in the investigation, such internal communications could provide additional context or clues that could help to identify the individuals involved, especially in a smaller organisation.
 - ICB staff structures, departments or job roles (ie a list of departments or teams involved in the investigation or a description of the roles of staff members in the investigation process). If only certain departments or roles are likely to be involved in the fraud investigations, revealing the number of investigations could allow people to narrow down the potential individuals involved.
14. The Commissioner has considered the ICB's position but isn't persuaded that disclosing the specific number of people who have been or are being investigated for fraud or fraud-related activities over a two year period is those people's personal data. This is because he doesn't

consider it would be possible to identify those specific individuals from that number.

15. First, the request is for the number of people across the ICB, it isn't for the number within a specific team or directorate. If it had been, this might have narrowed down the pool of people the requested number could relate to, and so potentially make it possible to identify those people.
16. Second, the Commissioner considers it likely that some staff within the ICB will know the identities of people who've been investigated for fraud. There may also be some staff who suspect certain people have been investigated. Disclosing the number of people investigated doesn't add anything to what those ICB staff members already know or suspect. Regarding the latter, disclosure wouldn't make it any easier or harder to identify particular people. As the ICB itself has pointed out, there are already a number of clues available to a sufficiently-motivated person to help them identify individuals currently or previously under investigation. Someone unable to identify the individuals couldn't learn anything about them from the withheld number; someone who has already identified the individuals, because they know who has been investigated, would learn nothing from the withheld number that they didn't already know.
17. Because he's found that the requested number can't be categorised as personal data, it's not necessary for the Commissioner to go on to consider whether disclosing the information would breach one of the data protection principles.
18. The Commissioner's decision is that the ICB incorrectly applied section 40(2) of FOIA to part 1 of the complainant's request.

Procedural matters

19. In their complaint to the Commissioner, the complainant said:

"In addition, the Public Body did not provide any advice or assistance (under Section 16 of the FOI Act 2000) as to how I can alter or adjust my request to enable me to obtain the information I have requested. This didn't happen at the original request stage or the review stage, despite my asking."
20. Under section 16(1) of FOIA, a public authority has a duty to provide advice and assistance to an applicant, "so far as it would be reasonable to expect the authority to do so."

21. Section 16(2) of FOIA states that a public authority that has conformed with the Code will have complied with section 16(1) of FOIA.
22. Part 2 of the Section 45 FOIA Code of Practice¹ discusses the circumstances when a public authority should provide an applicant with advice and assistance. As well as providing help to prospective applicants, these are: clarifying the request, reducing the scope of the request and transferring the request. None of these are a factor in this case.
23. The Commissioner notes his finding above that the ICB should have disclosed rather than withheld the requested information. However, even if he had been satisfied that the exemption had been correctly applied, the Code doesn't identify any advice and assistance that the ICB ought to have provided in that situation.
24. The Commissioner finds that, in the circumstances of this case, there was no specific advice and assistance that the ICB was obliged to provide. It therefore complied with section 16(1) of FOIA.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

25. 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

26. 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.
27. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF