

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2025

Public Authority: University Hospitals Bristol and Weston NHS Foundation Trust

Address: Marlborough Street
Bristol BS1 3NU

Decision (including any steps ordered)

1. The Commissioner's decision is that the information about disciplinary cases requested in three parts of the complainant's request is exempt information under section 40(2) of FOIA. That information can be categorised as personal data and it would be unlawful to disclose it.
2. University Hospitals Bristol and Weston NHS Foundation Trust ('the Trust') breached sections 1(1) and 10(1) of FOIA in respect of the remaining three parts of the request.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a fresh response to parts 4, 5 and 6 of their request that doesn't rely on section 40(2) of FOIA.
4. The Trust 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. The complainant made the following information request to the Trust on 2 July 2024:

- "1. How many cases or settlements, as an alternative to tribunals, has UHBW been involved in during the past 4 years, where racism has been a factor?
2. How many settlements or tribunals has UHBW been involved in that are unrelated to racism, that have resulted in settlements?
3. How many of these processes or cases have led to Human Resource Representatives or Managers involved being subject to disciplinary investigations?
4. How many Human Resource Representatives or Managers have been subject to disciplinary or other investigations as a result of costs being incurred by UHBW?
5. How many Human Resources Representatives have been subject to informal investigations in relation to the support of employee relations case work?
6. How many Human Resources Representatives at UHBW have been subject to disciplinary sanctions as a result of cases that they have been involved in, that have either been internally investigated, that have gone to tribunal or that have been settled outside of tribunals?
- I would like the period to be reviewed for all of the above to cover the last 4 calendar years."
6. The Trust issued a refusal notice on 12 July 2024, refusing the six parts of the request under section 40(2) of FOIA. The Trust maintained this position following its internal review of 13 August 2024.
7. In its submission to the Commissioner, however, the Trust confirmed that it had incorrectly applied section 40(2) to parts 4, 5 and 6 of the request.
8. In its submission, the Trust also acknowledged that it could have directed the complainant to exit package information relevant to part 2 of the request - though not the specific information requested – which is published in its [20-21 annual report](#), its [21-22 annual report](#), its [22-23 annual report](#) and its [23-24 annual report](#).
9. It says the same information for its 24-25 annual report will be published next year and, as such is exempt under section 22 of FOIA, which concerns information intended for future publication.

Reasons for decision

10. This reasoning covers the Trust's application of section 40(2) to parts 1, 2 and 3 of the complainant's request. He'll also consider procedural matters associated with parts 4, 5 and 6.
11. 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).
12. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
13. The Commissioner has first considered whether the information the Trust is withholding under section 40(2), which is numerical information, can be categorised as personal data. The Trust has provided him with the information it's withholding.
14. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
15. The number being withheld for each of the remaining three parts of the request is a small number - five or less - and the Trust said in its submission that it would be possible to identify a person or people from those numbers.
16. On further questioning, the Trust explained in more detail how identification could be achieved for each of the three parts. The Commissioner isn't going to reproduce the detail in this notice, however, in order not to disclose the personal data that the Trust is seeking to protect. Suffice to say that from those numbers and the way the questions have been framed identification could be achieved by combining the number with information that is already known, for example by other people who work at the Trust.
17. Because the information relates to a living individual(s) and the individual or individuals could be identified from it, the information requested in parts 1 – 3 of the request can therefore be categorised as the personal data of that individual or individuals – the data subject(s).
18. The Commissioner has gone on to consider whether disclosing that data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.

19. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
20. Article 6(1)(f) 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 child."
21. In order to determine whether disclosing the personal data would be lawful the Commissioner has considered three 'tests': the legitimate interest test, the necessity test, and the balancing test where the applicant's legitimate interests are balanced against the data subject's interests or fundamental rights and freedoms.
22. The complainant has an interest in the outcomes of disciplinary investigations and that's a legitimate interest for them to have. There's also a degree of wider interest in that matter and in the Trust demonstrating it's transparent about disciplinary investigations and outcomes.
23. In order to address those specific interests, it would be necessary for the Trust to disclose the requested information. The Commissioner has therefore gone on to carry out the final, balancing, test.
24. In considering this balancing test, the Commissioner takes into account any or all of the following: the potential harm or distress that disclosure may cause; whether the information is already in the public domain; whether the information is already known to some individuals; whether the data subject(s) expressed concern about the disclosure; and the reasonable expectations of the data subject(s).
25. A key issue is whether the data subject(s) concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as the individual(s) general expectation of privacy, whether the information relates to employees in their professional role or to them as individuals, and the purpose for which they provided their personal data.
26. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.

27. Although the requested information relates to the data subject(s) in their professional role(s), the Commissioner considers that they'd have the reasonable expectation that their personal data wouldn't be disclosed to the world at large under FOIA. Given that expectation and the nature of the information, disclosing it would cause the data subject(s) harm and distress. The Commissioner also considers that the information that the Trust publishes in its annual reports meets the interest in transparency about disciplinary investigations to an adequate degree.
28. Based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh the data subject(s)' fundamental rights and freedoms. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful.
29. Because disclosure would be unlawful, the Commissioner doesn't need to go on to consider separately whether disclosure would be fair or transparent.
30. The Commissioner's decision is that the Trust is entitled to withhold the information requested under parts 1 to 3 of the request under section 40(2) of FOIA.

Procedural matters

31. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information an applicant has requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
32. Under section 10(1) the authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
33. As noted, in its submission to the Commissioner the Trust has advised that it had wrongly applied section 40(2) to the information requested in parts 4, 5 and 6 of the request. It indicated that it could disclose information relevant to those parts.
34. The Commissioner therefore finds that the Trust has breached section 1(1) and 10(1) of FOIA as it hasn't communicated to the complainant the non-exempt information relevant to the request within the statutory timeframe.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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