

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2025

Public Authority: South East Coast Ambulance Service NHS Foundation Trust

Address: Trust Headquarters
Nexus House Way
4 Gatwick Road
Crawley
West Sussex
RH10 9BG

Decision (including any steps ordered)

1. The complainant requested information in respect of employees accused of or arrested for sex related offences. South East Coast Ambulance Service NHS Foundation Trust (the Trust) provided some information in scope of the request but refused the bulk of the request citing section 40(2) (personal information).
2. The Commissioner's decision is that the Trust was entitled to refuse the information on the basis of section 40(2) of FOIA. He also finds that section 41 of FOIA is engaged, this is because it's information that was provided in confidence, and the public interest favours maintaining the exemption in this case.
3. No steps are required as a result of this decision.

Scope of the case

4. The Commissioner considers that due to the nature of the information in scope of the request, section 41 (information provided in confidence) also applies.
5. The scope of the Commissioner's investigation is to consider whether the Trust was entitled to rely on the exemptions specified.

Request and response

6. The complainant made the following information request to the Trust:

Pursuant to the UK's Public Records Act, I hereby request the following:

1. A list of the number of all employees accused or arrested on charges of child sexual abuse from January 1, 2019, until the day this request is fulfilled.

Please consider the timeframe listed in request (1) above for all subsequent requests below.

2. A breakdown of the different crimes reported: rape, grooming, groping, lewd acts, anal or vaginal penetration, and other examples listed as crime by the Home Office.

3. All disciplinary files or records of employees investigated for child sexual abuse. This request relates to employees whose names have already been released into the public domain and as such, Section 40 of the Act which exempts sensitive information on the identity of these employees cannot be applied to this request.

4. An annual summary from 2019 of all legal costs, settlements, or restitution paid to affected families of these children.

Such public records should include, but not be limited to, all complaints; allegations; claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview recordings; transcripts and/or notes; reviews; emails, text or other electronic messages, voicemails, and/or other communications and/or correspondence; determinations; decisions; orders; resignation letters; employment reclassification documents; offers in compromise and/or settlement agreements; termination and/or transfer papers; letters of reproof and/or other disciplinary actions, whether imposed or not; referrals to law enforcement, administrative, and/or licensing agencies, departments, and/or bodies; appeals; court filings and/or rulings; and all similar materials notwithstanding the use of other terminology, nomenclature, or categorization by this or other involved public agencies.

When fulfilling this request, please exclude emails from mailing lists, which can often be identified by excluding emails with keyword "unsubscribe." If the records office has an alternative method for excluding emails from mailing lists, kindly employ that methodology."

7. The Trust's final position was that the relevant information it holds for parts one and three are exempt from disclosure under section 40 of FOIA, and it holds no information for part two and no payments were made in relation to part four.

Reasons for decision

8. The Commissioner's reasoning focusses on whether the Trust is entitled to withhold the information the complainant has requested under section 40(2) and whether section 41 of FOIA was engaged for part three of the request.

Section 40(2) – third party personal information

9. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a) . This 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 ("the DP principles"), as set out in Article 5 of the UK General Data Protection Regulation ("UK GDPR").
11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data, then section 40 of the FOIA cannot apply.
12. Secondly, if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

13. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. Having considered the nature of the withheld information, employees who have been accused of or arrested for alleged sexual offences, the Commissioner is satisfied that the information relates to and identifies

individuals. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

16. The complainant has argued that:

"In relation to Section 40 of the Act, I'm referring this response to the "less than five" absolute exception which provides written instructions on how to process requests seeking information on cases with less than five reported incidents -- releasing such information could lead to the identification of potential victims or suspects.

Your response notes you have recorded less than 10 of these cases, not five, and I'm afraid this absolute exception does not apply here. Should you confirm that the number of cases you have requested is greater than five, I'm appealing that the requests made in this FOI are duly processed."

17. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific circumstances of those involved) which is not shared by the wider public.

18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

19. The most relevant DP principle in this case is principle (a).

Legitimate interests

20. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interests can include broad general principles of accountability and transparency, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate.

21. The requester wishes to know employee specific information regarding serious allegations in order for transparency and accountability. The Commissioner therefore accepts that the complainant has a legitimate interest in the information.

Is disclosure necessary?

22. 'Necessary' means more than desirable but less than indispensable or absolute 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.
23. The Commissioner is aware that disclosure under FOIA is disclosure to the world at large. It is the equivalent of the Trust publishing the information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.
24. The Commissioner notes that the Trust has demonstrated that the information is regarding individual employment details including disciplinary and HR matters. He is therefore satisfied that disclosure of the withheld information is necessary to meet the requester's legitimate interests.

Balance between legitimate interest and the data subject's interests or fundamental rights and freedoms

25. It is necessary to balance the legitimate interests in disclosure against the individual's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the individual would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
26. In considering this balancing test, the Commissioner has taken into account the following factors:
 - 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 individuals expressed concern to the disclosure; and
 - the reasonable expectations of the individuals.
27. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an

individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

28. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals mentioned.
29. The Commissioner considers that the individuals involved have a strong and reasonable expectation that personal information about them will remain confidential and indeed have been promised a level of confidentiality when taking up their employment, given the nature and scope of work undertaken by the Trust.
30. The Commissioner accepts that there is an expectation that the personal and employment information of individual employees will remain private. The Commissioner has seen no indication that the data has been made public by the individuals.
31. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
32. Given the above, the Commissioner is satisfied that the Trust is entitled to rely on section 40(2) of FOIA to withhold information in scope of the request.

Section 41 – information provided in confidence

33. Under section 41(1) of FOIA, information is exempt from disclosure if (a) it was obtained by the public authority from any other person and (b) disclosing it would constitute an actionable breach of confidence. Section 41 is an absolute exemption and not subject to the public interest test.
34. Under the terms and conditions of employment the Trust commits to keep information disclosed to it confidential, this is explicit and is inherent in documents pertaining to HR matters.
35. To maintain these requirements the Trust informs all employees at the onset of their employment, what the information collected will be used for and how long the information will remain in the employees HR files and associated documents.
36. In this case, the Trust is content that the information provided by third parties and individuals was given with the expectation of confidentiality

and that there is a real possibility that a breach of confidence would be actionable by the third parties.

37. The Commissioner is satisfied that the Trust obtained the requested information from another party, that being law enforcement and individuals.
38. The Commissioner has next considered whether disclosing the information would constitute an actionable breach of confidence. To do this he considers four tests.
39. First, he is satisfied that the information has the necessary quality of confidence because it is not trivial – concerning as it does, serious allegations of abuse – and because it is not otherwise accessible. If it were otherwise accessible, the complainant would not need to request it from the Trust.
40. Second, the process that's designed to hold relevant documents regarding an employee's employment and any potential disciplinary issues has an inbuilt expectation of confidentiality between individuals and the Trust.
41. The Trust provided the Commissioner with further explanation. It said that: "the Trust acknowledges that the Section 41 exemption may also have been applied to this request. This opinion is based on the request type, information is of a personal / sensitive nature, the specific purpose which this relates to, and the number of cases involved."
42. In their internal review request the complainant has argued that as the Trust has relied on less than 10 cases held and not less than five, the exemption does not apply.
43. It is clearly expected/accepted that information provided in relation to employment matters and any potential disciplinary concerns would be dealt with in a manner to impart privacy and confidentiality in order to allow the process to function properly without being undermined by inappropriate disclosures.
44. The Commissioner is therefore satisfied that the requested information was imparted to the Trust in circumstances importing an obligation of confidence.
45. Third, the Commissioner has considered whether unauthorised disclosure of the information would cause a specific detriment to the party which provided it or any other party. The Commissioner has noted that the approach taken by the courts in some cases is that detriment is not always a pre-requisite to an actionable breach of confidence.

46. It is considered disclosing the information would be of detriment to the Trust's integrity and own internal and external interests. This is because of the nature of their work and the likelihood that information provided would not remain confidential therefore, employees and third parties would be reluctant to share vital information going forward.
47. In terms of detriment, the Commissioner accepts that unauthorised disclosure of the information would cause a detriment to the confider and other third parties, for the above reasons.
48. Finally, with reference to the three tests discussed, the Commissioner is satisfied that, with regard to the individuals, disclosing the information would constitute a breach of confidence. This is because of the individual's reasonable expectations as well as the direct statement of confidentiality and what the Trust has described as the nature of the process.
49. But for section 41 to apply the breach must be actionable. This means that there must be a good chance of such an action succeeding because the public authority wouldn't have a valid defence to such a claim.
50. A public authority can defend itself against an action for a breach of confidence if it can establish a public interest defence – that the breach of confidence was necessary in the public interest. The Commissioner isn't satisfied that such a defence would be viable here.
51. In their request for an internal review the complainant did not put forward any public interest arguments for disclosing the information. Therefore, it would seem the requester has not considered the wider public interest arguments and is only considering release for their own purposes whether that be on a business or personal level. They did say they would expect sensitive information on both employees and alleged victims would be redacted.
52. However, the Commissioner is satisfied that it would be an actionable breach of confidence for the Trust to disclose the requested information under FOIA and, as such section 41(1) applies.
53. The Commissioner has found that the requested information for part three is exempt from disclosure under section 41(1) of FOIA.

Right of appeal

54. 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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
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