

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 7th November 2005

Name of Public Authority: York Hospitals National Health Service Trust

**Address of Public Authority: York Hospital
Wigginton Road
York
YO31 8HE**

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 4th January 2005 the following information was requested from York Hospitals NHS Trust under section 1 of the Freedom of Information Act 2000 (the "Act"):

Summary of the information requested :

All the information relating to a grievance procedure that the complainant had invoked against her line manager, including records of all witness statements, letters, emails, minutes of meetings, accusations and comments about her, together with the report of the investigation into the complaint she had made against her line manager.

It is alleged that:

The public authority incorrectly applied the exemption relating to personal information, provided by section 40 of the Act and therefore failed to communicate the information requested in breach of section 1 of the Act.

The Commissioner's Decision

Under section 50 of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn or abandoned, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The information in question relates to events in 2000 when the complainant was employed by North Yorkshire Health Authority. The North Yorkshire Health Authority was later replaced by the York Hospitals NHS Trust.

The complainant had made complaints about her then line manager which were investigated by the Health Authority and a confidential report produced in July 2000, which included all the statements taken during the investigation. The other information falling within the scope of the request are copies of letters from the witnesses interviewed during the investigation, saying whether or not they consented to the disclosure of their statements to the complainant. These letters had been generated when the complainant made a subject access request under the Data Protection Act 1998 (the 'DPA') for similar information in 2003.

Some of information falling within the scope of the complainant's request is personal data about her. The remainder is personal data about third parties including her line manager and the witnesses who provided statements during the investigation.

The Commissioner's decision is as follows:

The personal data relating to the complainant is exempt information under subsection 40(1). This is an absolute exemption and so there is no requirement to consider the public interest.

The personal data about the third parties is exempt under section 40(2) by virtue of the condition in subsection 40(3)(b) being satisfied. This is also an absolute exemption and so again there is no requirement to consider the public interest.

In light of this there has been no breach of the duty under section 1 of the Act to communicate the information requested.

Action Required

In view of these matters, which are more fully explained in the attached Statement of Reasons, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by York Hospitals National Health Service Trust.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 7th day of November 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

The information requested consists of a copy of the final report, which includes all the statements taken during the investigation, and copies of letters from the witnesses who provided those statements saying whether or not they consented to the disclosure of their statements to the complainant. These letters had been generated as a result of the complainant's earlier subject access request.

Some of information requested is personal data about the complainant. Under section 40(1) of the Act any personal data about the person making the request is exempt information. This is an absolute exemption and so there is no requirement to consider the public interest test.

The complainant's right to personal data about her should be considered in accordance with the provisions of the DPA and the matter will not be addressed further in this Decision Notice.

The other information falling within the scope of the request is personal data about third parties. In this case the right of access to the personal data about third parties is dependant on the provisions of subsections 40(2) and 40(3). Subsection 40(2) provides that personal data about third parties is exempt information if one of the conditions set out in subsection 40(3) is satisfied.

Generally speaking s40(3) provides that third party personal data is exempt information where to disclose the information would contravene the data protection principles set out in the DPA or section 10 of the DPA.

The personal data that has been requested in this case is held by the public authority as manual data, but it does not form part of a relevant filing system as defined by the DPA. Such personal data falls within paragraph (e) in section 1 of the definition of data in the DPA. This category (e) data is exempt from some of the important provisions of the DPA. Section 33A(1) of the DPA exempts such data from many of those provisions that operate to protect personal data from disclosure. This includes an exemption from the First Data Protection Principle which states that the processing of personal data must be fair and lawful.

However under section 40(3)(b) of the Freedom of Information Act the exemption provided by section 33A(1) of the DPA is disregarded when considering whether disclosing the information would contravene any of the data protection principles. In other words it is assumed that the personal data still has to be processed in accordance with the First Data Protection Principle and so any disclosure must still be fair and lawful.

A number of the third parties involved had consented to their statements being disclosed to the complainant. This may enable the public authority to provide the complainant with some of the personal data contained in those statements without contravening the DPA. However subsection 40(3)(b) provides that information is exempt where its disclosure to “a member of the public” would contravene the data protection principles. Therefore in applying the exemption it is necessary to consider a much wider audience than simply considering a disclosure to the individual making the request.

Taking account of the nature of the information itself, the circumstances in which it was collected and what the reasonable expectations of the third parties involved would have been as to how the data would have been used and to whom it may be disclosed, the Commissioner is satisfied that a disclosure to the general public would be unfair and so would contravene the First Data Protection Principle. Therefore it is exempt information under subsection 40(3)(b). This subsection provides an absolute exemption and so there is no requirement to consider the public interest.