

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 22 January 2007

Public Authority: The Medicines and Healthcare Products Regulatory Agency
(an executive agency of the Department of Health)

Address: Market Towers
1 Nine Elms Lane
London
SW8 5 NQ

Summary

A request for information was made on 30 January 2005 and the public authority withheld this information on 11 February 2005, citing the exemptions at section 40 for personal information and at section 43 for prejudice to commercial interests. The complainant did not accept the application of the exemptions. The Commissioner's decision is to uphold the application of the section 40 exemption, and to not uphold the application of the section 43 exemption.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision. The Commissioner notes that under the Act the MHRA is not a public authority itself, but is actually an executive agency of the Department of Health. The public authority in this case therefore is actually the Department of Health not MHRA. However, for sake of clarity, this decision notice refers to MHRA as if it were the public authority.

The Request

2. The complainant made the following request on 30 January 2005 " In my second SAR that was answered in May 2004 I was provided with one page of the document entitled "The investigation of the allegations made by [name redacted] on the quality of the analysis performed by [name redacted]." The attached note states that this was actually a 6 page document. Can I request that you send the other five to me as a request under the Freedom of Information Act 2000?"

3. The complainant's reference to his "SAR" refers to a subject access request he had previously made under the Data Protection Act 1998. In response to this the public authority had sent him extracts from the relevant document and his Freedom of Information request was for the remainder of the document
4. The public authority issued a refusal notice on the 11 February 2005 withholding the requested information under the exemptions provided at section 40 of the Act for personal data and section 43 of the Act for prejudice to commercial interests.
5. The complainant requested an internal review of the public authority's decision, and the public authority upheld its previous decision in its letter dated 28 April 2005.

The Investigation

Scope of the case

6. On the 24 May 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the document should be released to him in full.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. The Commissioner contacted the complainant on 19 August 2006 to confirm the nature of his complaint. The complainant responded on 4 September 2006.
9. The Commissioner contacted the public authority on 8 September 2006. He asked the public authority to provide a copy of the withheld information and to provide arguments in support of its application of the exemptions. The public authority responded on the 11 October 2006. The public authority's response is considered in the analysis section of this notice
10. The Commissioner raised further points with the public authority on 1 December 2006. The public authority responded on 12 December 2006.

Analysis

11. The Commissioner considers that the document in question is in two distinct sections. The first section comprises a diary of an investigation, detailing actions on various dates by various individuals. The second section presents the results of the investigation. The Commissioner notes that the document details an investigation carried out by a third party not one performed by the public authority itself. He also notes the public authority's comments that it did not author or

commission the document and that it held no evidence as to the identity of its author.

Exemptions

Section 40

12. The information withheld by the public authority under the exemption provided at section 40 of the Act for personal data is all contained in the first section of the document. It comprises names and personal identifiers that were redacted from the information previously provided in response to the complainant's subject access request.
13. Section 40 (2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998.
14. The first data protection principle requires that the processing of personal data should be fair and lawful and the Commissioner considers that to release the names and personal identifiers of the third parties in the document would be unfair processing
15. The majority of the people identified within the document are not employees of the public authority, and as such the Commissioner considers that they would have a reasonable expectation that it would not release their names into the public domain. Further, the Commissioner considers that as the document contains references to their alleged involvement in unsubstantiated events to release this information might cause the third parties unnecessary or unjustified distress. He therefore considers that to release this information would breach the first data protection principle.
16. One person named within the document is an employee of the public authority and their name is included in the document in relation to their working rather than their personal life. The Commissioner considers that information about the working lives of public authority employees can normally be released without breaching data protection principles, unless to do so would cause some detriment to them. The public authority has argued that to release this information would be detrimental to this person as it might expose them to attempts at victimisation. The Commissioner is satisfied that the public authority have demonstrated in this case that to release this information would be detrimental to the employee concerned. He therefore considers that to release this information would breach the first data protection principle.

Section 43

17. The information withheld by the public authority under section 43 of the Act comprises all of the second section of the document, entitled "Results of the Inquiry", and some further information contained in the first section of the document. The Commissioner has seen a copy of the withheld information.

18. The exemption for Commercial Interests is a qualified exemption. This means that for it to apply a public authority must first of all show that the exemption is engaged and that releasing the information would be likely to harm someone's commercial interest. It must then also show that the public interest in upholding the exemption outweighs the public interest in releasing the information.
19. The public authority argued that releasing the information would prejudice the commercial interests of a third party. It argued that because the information relates to allegations of malpractice made against a third party, releasing the information could cause a loss of public confidence in that third party which might then prejudice their commercial interests. The public authority argued that this would apply even though its own separate investigation had found that the allegations were not proven. It also stressed that it did not author or commission the document and that it held no evidence as to the identity of its author.
20. As regards the public interest test, the public authority argued that as the outcome of its own investigation into the allegations of malpractice was that no risk to the public had been identified, it considered that there was no public interest in releasing the information. It did not provide any public interest arguments in favour of maintaining the exemption.
21. The Commissioner firstly considered whether the section 43 exemption was engaged. He considers that in order for prejudice to be caused there must be a significant risk rather than just a remote possibility of prejudice. The Commissioner considers that in this case the public authority has not demonstrated that such a significant risk exists. In reaching this decision the Commissioner took particular account of the fact that the request was made almost five years after the original allegations were made and three and a half years after the public authority's own investigations into the allegations had been completed. Also by the date of this notice a further two years have passed. He considers that the release of information relating to allegations found to be unproven by the public authority, about matters that took place this long ago, does not present a significant risk of damage to reputation sufficient to prejudice commercial interests. The fact that the public authority did not author or commission the document, and is free to explain the context - including its position about the status of the document - reinforces this finding. The Commissioner therefore concludes that the exemption for commercial interests is not engaged.
22. As the Commissioner finds that the exemption is not engaged, he has not gone on to consider the public interest test.

The Decision

23. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The application of the section 40(2) exemption for personal data.

24. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The application of the section 43(2) exemption for prejudice to commercial interests.

Steps Required

25. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

The public authority should release the information withheld under section 43 of the Act. In doing this it should ensure that it also complies with the Data Protection Act 1998 by redacting any names or personal identifiers of third parties contained within this information. As the release of this information under the Freedom of information Act would be considered a release into the public domain, the public authority should also redact the name of the complainant.

26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

27. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

28. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 22nd day of January 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Personal information.

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Commercial interests.

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”