

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2016

Public Authority: Dr Elizabeth Cope
Address: Hadleigh Boxford Group Practice
Hadleigh Health Centre
Market Place
Hadleigh
Ipswich
IP7 5DN

Decision (including any steps ordered)

1. The complainant has requested information about the writer of a particular telephone note. Hadleigh Boxford Group Practice ('HBGP') has withheld the information because it says it is the personal data of a third person.
2. The Commissioner's decision is that HBGP:
 - breached section 17(1) of the FOIA as it failed to issue a valid refusal notice; and that
 - the requested information is the personal data of a third person and is therefore exempt from disclosure under section 40(2) of the FOIA. HBGP is not required to take any steps.
3. The Commissioner notes that HBGP itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. For ease and clarity, this notice refers to HBGP where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

4. On 18 February 2016, the complainant wrote to HBGP and requested information in the following terms:

"In respect of the writer (as defined above) please provide, in writing,

- 1. The name of the writer.*
 - 2. An extract from the contract between your organisation and the writer that describes all of the services which the writer is contractually bound to perform for your organisation.*
 - 3. A list of qualifications held by the writer which qualify the writer to perform the services mentioned in 2 above."*
5. HBGP responded on 25 February 2016. It said that it had already provided the complainant with all the information it is required to [as a result of a wider complaint he has against HBGP and a related subject access request the complainant had submitted under the Data Protection Act (DPA)].
6. In a further letter to the complainant dated 2 May 2016, HBGP said that the information he has requested is the personal data of the writer and that the individual in question has not consented to its release. The Commissioner is prepared to consider this correspondence to have been an internal review of its response.

Scope of the case

7. The complainant contacted the Commissioner on 7 March 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on HBGP's refusal of the request and whether the requested information is the personal data of a third person and so exempt from disclosure under section 40(2) of the FOIA.

Reasons for decision

Section 17 – refusing a request

9. Section 17(1) of the FOIA says that if a public authority is relying on a claim that the requested information is exempt from disclosure, it must give the applicant a notice that (a) states that fact (b) specifies the exemption in question, and (c) says why the exemption applies.

10. HBGP told the complainant in its correspondence of 2 May 2016 that it did not intend to release the requested information because it considered it to be the personal data of a third person. However, HBGP did not, in either this correspondence or its earlier response of 25 February 2016, refer to the relevant FOIA exemption – section 40(2) in this case – and explain why it applied.
11. HBGP has explained to the Commissioner that it mistakenly considered that personal data would not fall within the scope of the FOIA. HBGP is now aware that such information *is* covered by the FOIA but the Commissioner must find that HBGP breached section 17(1) of the FOIA. This is because it did not issue a valid refusal notice within the appropriate timescale ie within 20 working days of receiving the request.

Section 40(2) - personal data of a third person

12. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the requester, and the conditions under either section 40(3)(a) or 40(4) are also satisfied.
13. The Commissioner has therefore first considered whether the information HBGP has withheld is the personal data of a third party.

Is the information personal data?

14. The DPA says that for data to constitute personal data, it must relate to a living individual, and that individual must be identifiable.
15. The information withheld in this case is the name of a particular individual, details of their contract with HBGP and the individual's qualifications. The Commissioner is satisfied that this data relates to a living individual and that the individual can be identified from it. The Commissioner is therefore satisfied that the information the complainant has requested is the personal data of a third person.

Would disclosure breach one of the conditions under section 40(3)?

16. Section 40(3)(a) of the FOIA says that personal data of third persons is exempt from disclosure if disclosing it would contravene one of the data protection principles or would cause damage or distress and so breach section 10 of the DPA.
17. HBGP's position appears to be that releasing the requested information to the complainant would contravene the first data protection principle as it would not be lawful or fair to the individual concerned.
18. HBGP has told the Commissioner that the individual concerned (the data subject) has not consented to the release of their personal data. As

such, the Commissioner considers that that individual would reasonably expect that their personal data would not be made available to the wider public. Releasing the information may also therefore be harmful, detrimental or upsetting to that individual.

19. The Commissioner is satisfied that HBGP has correctly withheld the information the complainant has requested. This is because releasing the information under the FOIA would be unfair and would contravene the first data protection principle. The Commissioner considers that disclosure is also likely to cause distress to the data subject, and so breach section 10 of the DPA. Since disclosing the withheld information would breach at least one of the conditions under section 40(3), the Commissioner is satisfied that the information is exempt from disclosure under section 40(2) of the FOIA.
20. Despite the factors above, the requested information may still be disclosed if there is compelling public interest in doing so that would outweigh the legitimate interests of the data subject.
21. During the Commissioner's investigation, the complainant suggested that particular malpractice may be taking place at HBGP. The complainant has provided what he considers to be evidence that supports his claim; however the Commissioner does not consider this evidence to be compelling. In the Commissioner's opinion the evidence provided does not strengthen the public interest argument for disclosing the requested information.
22. Although the Commissioner recognizes that the requested information is of particular interest to the complainant, disclosure under the FOIA is effectively disclosure to the world at large. In the absence of any compelling evidence to the contrary, the Commissioner does not consider that the information the complainant has requested is of any wider public interest, such that it would outweigh the legitimate interests of the data subject.
23. Because one of the conditions under section 40(3)(a) has been satisfied, it has not been necessary to consider the condition under section 40(4).

Right of appeal

24. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Pamela Clements
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