

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2012

Public Authority: Greater Manchester West Mental Health NHS Foundation Trust

Address: Bury New Road
Prestwich
Manchester
M25 3BL

Decision (including any steps ordered)

1. The complainant has requested information relating to applicants for a voluntary redundancy scheme within the Trust. The Trust provided the complainant with some information in bands but refused to provide the specific information requested on the basis of section 40(2).
2. The Commissioner's decision is that the Trust has correctly applied section 40(2) to withhold the requested information.

Request and response

3. On 14 March 2012, the complainant wrote to the Trust and requested information relating to applications for a voluntary redundancy scheme (MARs) in the following terms:

"Details of ALL Mars applications in 2011. In particular this should include every aspect of the process, skills reviews etc. and should be able to meet the following requirements:

1. *The number of applicants for the MARs scheme 2011.*
 2. *The number of applicants who were successful and their posts left open for redeployment purposes.*
- 2 (i) *Their individual ages?*

2 (ii) Their individual lengths of service?

2 (iii) The amount of MARs severance payment received by each applicant?

2 (iv) The pay grade/band for each applicant?

3. The number of applicants who were successful and their posts were deleted.

3 (i) Their individual ages?

3 (ii) Their individual lengths of service?

3 (iii) The amount of MARs severance payment received by each applicant?

3 (iv) The pay grade/band for each applicant?

4. The number of applicants who were unsuccessful for the MARs scheme 2011.

4 (i) Their individual ages?

4 (ii) Their individual lengths of service?

4 (iii) The amount of MARs severance payment established for each applicant?

4 (iv) The pay grade/band for each applicant?

(Could you please ensure the information for each individual is linked i.e. No.1) 50 yrs of ages, 10 years length of service, MARs severance £10,000, pay grad 4 No.2 etc. etc.)

5. In addition please provide information relating to the details of ALL those who are or have been on the at risk of redundancy register at this present time along with the continued updates of persons being added to it or removed since 1/8/11 to the present day.

In the case of the register I'm not concerned with identities, a numbering system will be adequate.

6. Please provide me with:

6 (i) The amount of the budget allocated for the MARs 2011.

6 (ii) The total amount expended on MARs severance pay.

7. Reference has been made to the Directorate's decisions in regard to:

7 (i) Posts to be deleted under Mars &

7 (ii) My own post

Under the Freedom of Information act please provide all records in relation to 7(i)."

4. The Trust responded on 12 April 2012. It answered question 1 by confirming there had been 60 applicants for the MARS scheme in 2011. The Trust confirmed the number of applicants in relation to question 2 but refused to provide the information requested in 2(i) – (iv) on the basis of section 40(2) but did provide aggregated figures for 2(i) and (ii) in the following table but would not provide exact figures where it was less than 5:

Age	Number of candidates	Length of service (years)	Number of candidates
30-40	Less than 5	10 or less	Less than 5
41-50	Less than 5	11-20	Less than 5
51-60	10	21-30	Less than 5
61+	Less than 5	31+	5

The Trust also confirmed in response to 2 (iii) the total amount of MARS severance payment received by all applicants was £288,933.70.

5. In response to question 3 the Trust confirmed that 9 applicants were successful but refused to provide further information under 3(i) – (iv) on the basis of section 40(2). In line with its response to question 2 the Trust again provided a table with aggregated figures in response to 3(i) and (ii):

Age	Number of candidates	Length of service (years)	Number of candidates
30-40	Less than 5	10 or less	Less than 5
41-50	Less than 5	11-20	5
51-60	Less than 5	21-30	Less than 5
61+	Less than 5	31+	Less than 5

In response to 3(iii) the Trust confirmed the total amount of MARS severance payment received by all applicants was £146,240.10.

6. With regards to question 4, the Trust confirmed that there were 31 unsuccessful applicants for the MARS scheme but further information requested in 4 (i) – (iv) was being withheld on the basis of section 40(2). However a table showing aggregated figures for 4(i) and (ii) was provided:

Age	Number of candidates	Length of service (years)	Number of candidates
20-30	Less than 5	10 or less	9
30-40	Less than 5	11-20	10
41-50	Less than 5	21-30	8
51-60	14	31+	Less than 5
61+	11		

With regards to 4(iii) the Trust confirmed the total amount of MARS severance payment received by each applicant was £531,204.71.

7. In answer to question 5 the Trust confirmed the number of staff on its redeployment register was 31 but it did not hold any further information. In response to question 6 the Trust confirmed there was no budget allocated for MARS in 2011-12 and the total amount expended on MARS severance pay was £456,000.
8. Finally, in response to question 7 the Trust provided a flowchart used by the panel when making decisions but confirmed that records for individual posts were exempt under section 40(2).
9. The complainant asked for an internal review of this decision, raising concerns about the inconsistencies of the figures provided; specifically the total number of applicants stated to be 60 when the broken down figures amounted to 56 applicants. Similarly the complainant was concerned the overall figure for severance payments could not be reached by adding together the individual figures given. The complainant also did not accept that section 40(2) provided a valid basis for refusing to provide the information requested.
10. Following an internal review the Trust wrote to the complainant on 29 May 2012. It stated that the discrepancy in the number of applicants

quoted was due to there being 4 applicants who did not fit into any of the categories referenced in the request. The Trust upheld its use of section 40(2) to refuse to provide information in relation to employees with less than 5 years' service and maintains it was correct to aggregate information where there were 5 or fewer people within a specific category.

Scope of the case

11. The complainant contacted the Commissioner on 20 April 2012 to complain about the way her request for information had been handled. In particular the complainant had raised concerns about the continued reliance on section 40(2) by the Trust where the number of people is 5 or less in a category as it could be sufficient to identify individuals.
12. The Commissioner has carefully considered the information already provided by the Trust to the complainant and the basis on which the complaint was made to the Commissioner and has established that the focus of his investigation will be the decision by the Trust to rely on section 40(2) to withhold information requested in 2(i) – (iv), 3(i) – (iv) and 4(i) – (iv).
13. The Commissioner is satisfied that the Trust has provided information in relation to 1, 5, 6 and 7. Whilst he accepts that the complainant had some concerns around the accuracy of the information provided he considers the Trust did respond in line with the requirements of the FOIA and it has since gone on to provide further clarification to enable the complainant to understand how it arrived at the figures it provided.

Reasons for decision

14. The Trust has argued that it believes section 40(2) applies as providing any information where the figures are less than 5 could lead to identification of the individual applicant.
15. Section 40(2) states that information is exempt if it constitutes the personal data of a third party (other than the applicant) and one of the conditions listed in section 40(3) or 40(4) are satisfied.
16. During the investigation of the case the Commissioner asked the Trust to clarify its reliance on section 40(2) particularly with regards to why the information would be considered personal data. The Trust did provide some further explanations beyond simply stating the information could not be disclosed when there were fewer than 5 people so as not to

identify individuals. The Commissioner has therefore, after considering the nature of the information that has been aggregated and the arguments presented by the Trust, proceeded on the basis that the Trust is relying on section 40(3)(a)(i) to engage the exemption i.e. that the information is that of a third party and disclosure would contravene any of the principles of the Data Protection Act 1998 ("DPA").

17. In order to establish whether section 40 has been correctly applied the Commissioner has first considered whether disclosing the requested information about individuals who applied for the MARs scheme, their length of service and amount of severance pay would constitute the personal data of third parties.
18. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified from that data, or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
19. The information held by the Trust consists of the ages, lengths of service, amount of severance payment and pay grade of successful applicants for the MARs scheme whose jobs were deleted or left open and applicants who were unsuccessful. The Trust has aggregated figures where the number of individuals was less than 5 in any category as they consider it could lead to the identification of individuals.
20. The Commissioner has considered the information and the number of individuals involved and has concluded that if the Trust were to disclose the number of applicants in each category with their age, number of years' service, pay grade and estimated severance pay it could be possible to identify the individuals concerned. By aggregating this information the Trust has minimised the possibility of identification.
21. The Commissioner does however note that the chances of any member of the public being able to cross-reference this information to identify specific individuals is not high but given the low numbers involved he does consider there is a risk that specific individuals could be identified by a person with knowledge of the Trust, particularly other employees in the Trust. Therefore, on the balance of probabilities, the Commissioner accepts the information is personal data.
22. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first data protection principle. The first principle requires that the processing of personal data is fair and lawful and he first considered whether disclosure of the information would be fair.

23. In considering whether disclosure would be fair the Commissioner takes into account the following factors:
- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - The individual's reasonable expectations of what would happen to their information; and
 - Balancing the rights and freedoms of the data subject with legitimate interests.
24. In order to reach a view on whether the disclosure of this information would be fair, the Commissioner has placed specific emphasis on the nature of the information itself. The requested information if disclosed at the level requested with estimated severance payments linked to ages, pay bands and lengths of service provides information which reveals something about that individual's financial situation assuming they were successful in their application. For those unsuccessful individuals the information that has been requested would still indicate something about their personal situation by revealing their pay band and the amount of severance pay the Trust had estimated they may be entitled to. The Commissioner does not accept that releasing this information would be fair and considers it may cause distress to those individuals concerned.
25. The individuals who could be identified would have no expectation that their information would be disclosed. There is an implied level of confidentiality in voluntary redundancy schemes and it is difficult to see how individuals applying for such schemes would expect their details to be disclosed.
26. In relation to the final factor, the Commissioner notes there is a legitimate interest in the public understanding how money is spent especially by public bodies providing services such as Trusts. The Commissioner recognises that knowing how much has been paid out in severance payments by a Trust may assist in increasing the public's understanding of how the Trust is operated. However the Trust has already provided the overall figures for severance payments and the total figures for each of the successful and unsuccessful categories as set out in questions 2, 3 and 4 of the request. The Commissioner does not consider that disclosure of the information broken down any further so as to potentially identify individuals would provide greater understanding and it would prejudice the rights and freedoms of those individuals. The Commissioner therefore accepts that the rights and freedoms of the data subjects outweigh the public's legitimate interest in disclosure of this information.

27. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, section 40(2) is engaged and the further information relating to applicants for voluntary redundancy should be withheld.

Right of appeal

28. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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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