

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 August 2017

**Public Authority:** The Ipswich Hospital NHS Trust  
**Address:** Heath Road  
IPSWICH  
Suffolk  
IP4 5PD

#### Decision (including any steps ordered)

---

1. The complainant has requested information relating to a disciplinary investigation report. The Ipswich Hospital NHS Trust (the Trust) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the Trust has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

---

4. On 17 and 30 January 2017 the complainant made the following request for information under the FOIA:

*'1) An IT record of my personal data disclosing all details of who has accessed my data (when and where)...Please disclose access of all data with reference to my family by NHS Ipswich and Colchester NHS from December 2014-July 2015...*

*2) A copy of the full investigation report including the outcomes of the investigation with regards to the allegations made by myself [redacted name] of the malicious communications carried out by [redacted name A] using personal and NHS IT equipment that was seized by Essex Police...*

*A copy of procedures Ipswich NHS carried out on the following points below*

- *[redacted name A]'s failure to disclose being arrested and charged to the NHS...*
- *[redacted name A]'s failure to report NHS IT equipment being seized by Essex Police upon time of arrest ...*
- *[redacted name A]'s evidence provided to the NHS disclaiming all my [redacted name] allegations that I brought to Ipswich NHS attention.*

*(copies of all emails, letters, and minutes of meetings referring to all matters with my name on it [redacted name].)*

*3) ...Copies of all correspondence with regard to communications by NHS representatives regarding me [redacted name] to [redacted name A]. Copies of all correspondence/communications between the NHS representative you had sent to court on the given dates by myself [redacted name] that [redacted name A] was due to appear.*

*As this was a formal complaint and in accordance with your policy, any meeting/investigations should have been formally recorded. Therefore, I would like a copy of all those minutes and subsequent reports.*

*4) I request the following documentation from your HR Department (when and how my complaint was dealt with)*

- *(a)With regards to your internal whistle blowing policy, how was my data protection protected?*
- *(b)All communications via [redacted name A] to HR, reference [redacted name] and my entire family*
- *(c)All communications via Ipswich NHS representatives regards myself [redacted name] and my entire family to any individual or organisation.*
- *(d)Failure to comply with NHS company policy non-disclosure of arrest and charge reported by [redacted name] reference to [redacted name A]. (Copies of emails, letters and minutes of meetings.*
- *(e)Copies of false emails from Essex Police supplied by [redacted name A] to the NHS, signed [redacted name of PC](disclaiming all of [redacted name]'s reported information)*

5. On 23 February 2017 the Trust responded with answers, summarised as follows:
- 1) The Trust investigated if there were any medical records on its system and found none. It also checked and found that no staff members (former or existing) had accessed the National records (Summary Care Record). It was therefore *'satisfied that there has been no breach of confidentiality of your personal data'*.
  - 2) The Trust explained that any HR investigation correspondence relating to a member of staff is confidential and withheld under section 40 (personal information) of FOIA.
  - 3) The Trust investigated and found that the requested information was not held: *'No electronic communications exist between the staff member who attended court and [redacted name A]. The staff member in question did not send any emails about this matter or took any written notes during the court hearing.'*
  - 4) (a) The Trust stated that it had no medical records relating to the family and a letter from the Chief Executive dated 18 July 2016 stated that [redacted name A] had no access to patient systems, *'therefore we have no evidence that the Data Protection Act 1998 has been contravened.'*
  - (c) The Trust provided copies of emails and letters between the Trust and the family.
  - (b), (d) and (e) the Trust stated that any emails that exist between an employee (former or existing) and HR, matters relating to conduct of staff and any emails between an employee and the Trust are confidential and withheld under section 40 of FOIA.
6. On 28 March, the complainant requested an internal review.
7. On 5 May 2017 the Trust provided the outcome of the internal review which upheld its original response on 23 February 2017. It confirmed that:
- In relation to the request to receive a copy of your personal data the Trust confirmed that there are no records relating to the family on the hospital systems as it has not provided medical treatment.
  - In relation to the correspondence regarding [redacted name A], the Trust upheld the decision to cite section 40(2) (Personal Information) of the FOIA to refuse the information.

- The Trust restated that the Chief Executive had written on 18 July 2016 advising that the Trust has no further comment regarding specific employees and the situation remains unchanged – the Trust is not in a position to discuss matters relating directly to staff.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 27 February 2017 to complain about the way his request for information had been handled and after exhausting the internal review, the case was accepted on 23 May 2017.
9. During the investigation, the Trust confirmed that it does not hold any information on the complainant and his family apart from the emails and letters provided under question 4c. The Trust has cited section 40 to refuse to provide responses to the questions on a member of staff (Q2, Q4b, Q4d and Q4e.)
10. In addition, on 31 July 2017, the Trust provided the complainant with the Trust policy on Employment Checks and Clearances from the disciplinary investigation pack.
11. Therefore, the Commissioner considers the scope of this case to be to determine if the Trust has correctly applied section 40(2) FOIA to the remaining withheld information.

### **Reasons for decision**

---

#### **Section 40(2) – Third party personal data**

12. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

#### **Is the withheld information personal data**

13. Personal data is defined by the DPA as any information relating to a living and identifiable 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. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions

affecting them, has them as its main focus or impacts on them in any way.

15. The withheld information in this case is the confidential disciplinary investigation pack of a named individual.
16. The Commissioner is satisfied that the information withheld under section 40(2) is information from which living data subjects would be identifiable.

### **Sensitive personal data**

17. Any consideration of fairness must first determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to:
  - (a) racial or ethnic origin
  - (b) political opinions
  - (c) religious beliefs
  - (d) trade union membership
  - (e) physical or mental health
  - (f) sexual life
  - (g) criminal offences, sentences, proceedings or allegations.
18. Having viewed the withheld information the Commissioner considers it is clearly sensitive personal data. The information falls under section 2(g) of the DPA as it relates to the data subject's disciplinary investigation.
19. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely 'to have a detrimental or distressing effect' on the data subject, the Commissioner considers that it would be unfair to disclose the requested information.
20. The Trust has explained that *'personnel information kept by HR will only be shared with authorised persons in connection with their employment or health. This is shaped by the Data Protection Act 1998, namely the First Principle, and the NHS Confidentiality Code of Conduct.'*
21. The Trust also stated that *'employees expect any information divulged in connection with their employment will be treated in the strictest of confidence and not disclosed to members of the public.'*
22. The Commissioner understands that the Trust would not routinely make public such information and the Commissioner accepts that disclosure would be distressing for the named individual.

### **Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

23. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
24. In this case, the Commissioner is not convinced that the specific information requested is of sufficient wider public interest to warrant overriding the protection of the third party sensitive personal data of those concerned.
25. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individual named and that it would not be fair to disclose the requested information in this case.

### **Conclusion**

26. The Commissioner is satisfied that the withheld information is sensitive personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner upholds the Trust's application of the exemption provided at section 40(2) of the FOIA.

## Right of appeal

---

27. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**