

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2017

Public Authority: Sheffield Teaching Hospitals NHS Foundation Trust

Address: Royal Hallamshire Hospital
2 Claremont Place
Sheffield
S10 2TB

Decision (including any steps ordered)

1. The complainant has requested information on operations carried out at Sheffield Teaching Hospitals NHS Foundation Trust ("the Trust"). The Trust provided some information but refused to provide the names of consultants together with the number of operations performed and the locations of the operations on the basis of section 40(2).
2. The Commissioner's decision is that the Trust has failed to demonstrate that section 40(2) is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the names of the surgeons who have carried out non-emergency orthopaedic surgeries, together with numbers and locations as set out in the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 November 2016, the complainant wrote to the Trust and requested information in the following terms:

"I am seeking some information on non-emergency orthopaedic surgery carried out by the trust over the last two financial years. Specifically, I would like to know the number of operations carried out in each of the last two financial years at the Northern General, Claremont, Thornbury and Barlborough.

I am unclear how the commissioning/financial side of things is organised though it appears there is a general commissioning agreement for orthopaedic services from 2015 with the Sheffield CCG.

Either way, I would like to know the value of the non-emergency orthopaedic surgery carried out at each of the four venues.

It may be that STH requires a fixed amount to pay for a targeted number of operations. If so, I would like to know what that total amount is and how much of that has been paid to Claremont, Thornbury and Barlborough to carry out operations, plus the value of operations carried out at the Northern General.

I understand there are only a relatively limited number of orthopaedic surgeons who have carried out the operations in question and I would therefore like to know how many operations have been carried out by individual surgeons in each of the last two years and at which venue.

For example, Joe Bloggs, 14/15, 15 operations, 9 at Northern General, 4 at Claremont, 1 at Thornbury, 1 at Barlborough. If that breakdown is too onerous, I would be content to settle for a breakdown relating to named surgeons at Northern General and Claremont only."

6. The Trust responded on 11 January 2017 providing some information on orthopaedics but not including spinal services and only dating from October 2015 as prior to this it did not have contractual arrangements in place to perform operations at the named hospitals. The summary information provided included the financial value of operations delivered at different locations but withheld some information under section 43(2) and withheld the names of consultants under section 40(2) of the FOIA.
7. The complainant requested an internal review on 13 January 2017. He clarified he had requested information for the financial years 2014/15 and 2015/16 and asked why information had been excluded as there would have been a contractual arrangement for these surgeries to be carried out at different locations prior to the commencement of a new

contract in September 2015. The complainant also asked for some clarification on the terminology used in the information provided and argued that given that performance information for individual surgeons is already published he did not see why statistical data about the number of operations carried out could not be provided.

8. The Trust completed an internal review and responded to the complainant on 14 February 2017. The Trust explained it only had full data for October 2015 onwards when the contract came into place and suggested Sheffield CCG may hold the information prior to this period. The Trust also explained the terminology used in the information it had provided and maintained its position that section 40(2) provided an exemption from disclosing the names of consultants/surgeons alongside the number of operations carried out.

Scope of the case

9. The complainant contacted the Commissioner on 17 May 2017 to complain about the way his request for information had been handled. He raised concerns about the decision by the Trust to withhold information on the numbers of operations carried out at different venues by individual surgeons.
10. After clarifying with the complainant the Commissioner confirmed the scope of her investigation would be to determine if the Trust has correctly applied section 40(2) of the FOIA to refuse to provide the names of surgeons in conjunction with the number of operations they carried out at different locations since October 2015.

Reasons for decision

Section 40(2)

11. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
12. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (DPA).
13. The Trust has informed the Commissioner that it is withholding the names of surgeons alongside statistical information on the number of operations they have carried out and the venues the operations were at.

14. The Commissioner has first considered whether the withheld information is personal data.
15. Section 1 of the DPA defines personal data as information which relates 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.
16. In this instance the information in question includes the names of surgeons and the numbers/locations of operations they have carried out. This is information from which living individuals would be identifiable. The withheld information is therefore personal data.
17. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure of the information under the FOIA would be fair.
18. When considering whether the disclosure of this information under the FOIA would be fair, the Commissioner has to take into account the fact that FOIA is applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner must consider that if the information were to be disclosed, it would in principle be available to any member of the public.
19. The complainant has argued that consultants are in public facing roles and their names are listed on the Trust's own website. The Commissioner has looked into this and notes the Trust does have a 'Find a Consultant' section¹ which lists all consultants at the hospital. As this information is already publicly available the Commissioner cannot see how it could be seen as unfair to provide the names of consultants in response to the request.
20. The question is therefore whether stating the number of operations carried out by those consultants and the locations of those operations would be unfair and in breach of the first data protection principle.

¹ <http://www.sth.nhs.uk/primary-care-staff/find-a-consultant?show=x#results>

21. The Trust's only argument on this point is that consultants still have a right to privacy despite their more high profile and public facing role. The complainant argues that individual performance data for surgeons is already published and that this additional statistical information would not be unfair to publish.
22. The Commissioner has looked into what information can be easily accessed about surgeons and consultants and the operations they carry out as she considers this is a key factor in determining whether consultants will have any expectation of privacy over additional information about operations being disclosed.
23. The Commissioner has found that the main NHS website (www.nhs.uk) contains a section on performance indicators which has a search facility to look for either consultants by name, speciality or location and then to access information on the number of operations they have performed and survival rates². The Commissioner can therefore see how any member of the public could obtain the name of a consultant at the Trust and then use this to obtain performance information specific to that consultant.
24. The information the complainant is particularly concerned with is the performance information on consultants at the Trust and specifically how many operations they carried out at the different locations referred to in the request. Whilst this information itself is not currently accessible it is unlikely, given how much information on performance can already be accessed, that disclosing this additional performance information would be unfair.
25. The Commissioner is of this view as the information itself is of a factual nature and would simply provide a further breakdown of performance data to account for location. As it is factual and consultants are in very public facing roles it would not seem unfair to disclose this information unless there was likely to be some adverse effect on the individuals by doing so. As the Trust has not made any representations to suggest this is the case the Commissioner cannot see any reason to consider disclosing this information would be unfair and she therefore considers that section 40(2) has not been correctly engaged in this case.

² <https://www.nhs.uk/Service-Search/performance/search>

Right of appeal

26. 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

27. 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.
28. 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

Jill Hulley
Senior Case Officer
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Wycliffe House
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