

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2015

Public Authority: Great Western Hospitals NHS Foundation Trust

Address: The Great Western Hospital
Marlborough Road
Swindon
SN3 6BB

Decision (including any steps ordered)

1. The complainant has requested details of deceased people who have had a public health funeral. The Commissioner's decision is that Great Western Hospitals NHS Foundation Trust has correctly applied the law enforcement exemption at section 31(1)(a) of the FOIA. He does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 18 March 2015, the complainant wrote to Great Western Hospitals NHS Foundation Trust ("the Trust") and requested information in the following terms:
 - 1) *"Does this trust conduct Public Health Funerals (burials of individuals with no known family or next of kin)?"*
 - 2) *How many public Health funerals has the Trust conducted since January 2014 to the present (if applicable)?"*
 - 3) *Can you list the names of all the deceased individuals the Trust has carried out public Health funerals for since January 2014 (if applicable)?"*

- 4) *Can you list the last known address of all the deceased individuals the Trust has carried out public Health funerals for since January 2014 (if applicable)*
 - 5) *Can you list the date of birth and date of death of all the deceased individuals the Trust has carried out public Health funerals for since January 2014 (if applicable)*
 - 6) *Can you list whether or not the deceased individuals the Trust has carried out public Health funerals for since January 2014 details have been referred, or will be referred (or even might be referred) to the Treasury solicitor (if applicable).*
 - 7) *Has the Trust passed on any of this information (or similar information) on an informal basis or as a formal FOI request to another individual or company, if yes, what is the name of the individual/company*
 - 8) *Is there an individual or department in charge of carrying out the Trusts public Health Funerals? If yes, can you send me their names, emails and phone numbers?*
 - 9) *What is the name of the person(s) who refers information to the Treasury Solicitor? Can you send me their name, email and phone number?"*
3. The Trust responded on 10 April 2015 answering questions 1 – 2 and 6 – 9 but refused to provide the information requested at questions 3, 4 and 5 citing the exemption at section 41 of the FOIA.
 4. The complainant requested an internal review and the Trust provided its response on 24 April 2015 in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner on 8 June 2015 to complain about the way his request for information had been handled.
6. During the course of the Commissioner's investigation the Trust sought to rely on an additional exemption at section 31(1) of the FOIA to refuse the information requested in questions 3 – 5 of the request.
7. The Commissioner therefore considers the scope of his investigation to be to determine if the section 31(1) or 41 exemptions have been correctly cited and provide a basis for refusing parts 3 – 5 of the request.

Reasons for decision

8. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

a) the prevention or detection of crime ..."

Would disclosure be likely to prejudice the prevention and detection of crime?

9. In *Hogan v the ICO and Oxford City Council*¹ the Information Tribunal stated that:

"The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption...Second, the nature of the 'prejudice' being claimed must be considered...A third step for the decision-making concerns the likelihood of occurrence of the prejudice".

10. The relevant applicable interest in this exemption is the prevention or detection of crime and the Commissioner accepts that the arguments made by the Trust directly address this prejudice.

11. When considering the second step as set out in the *Hogan* case, the Commissioner must be persuaded that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.

12. The Trust has explained that when a patient dies whilst under the care of the Trust and where the patient has no known next of kin it will be required to arrange a public health funeral. The Commissioner understands that this is required under section 46 of the Public Health (Control of Disease) Act 1984.

13. The Trust states that disclosure of the information as requested would put the estate and assets of the deceased at risk. Expanding on this the Trust had argued that disclosure of the names, dates of birth/dates of death and last known address of a deceased patient would be likely to

¹ Appeal numbers EA/2005/0026 and EA/2005/0030

prejudice the prevention and detection of crime by highlighting a property as unoccupied.

14. The Trust argues that this may increase the risk of offences and cause loss to the unsecured estates as well as increasing the likelihood of identity fraud of the deceased person's identity.
15. Turning first to identification of empty properties, the Commissioner and the then Information Tribunal have considered requests for similar information before and the Commissioner believes it appropriate to consider those outcomes as part of this decision.
16. The Commissioner has had particular regard to the case of the London Borough of Bexley v Mr Colin P England and the Information Commissioner². In that case, the requester had asked for the addresses of vacant, empty or abandoned properties that had been listed as "long term empty" and "uninhabitable properties". The information had been withheld using the exemption under section 31(1)(a). In summary, the Tribunal accepted that the second and third tests set out in paragraph 10 of this decision notice were satisfied based on the following facts:
 - The Tribunal accepted evidence that empty properties are associated with criminal activity from organised local gangs. In particular, the Tribunal in paragraph 41 identified occasions of organised "stripping" of empty properties. This was the removal of all things of value (such as pipes and floor boards) leaving an empty and uninhabitable shell property.
 - The Tribunal also accepted evidence that while squatting is not a crime in itself, it is associated with criminal activity. The Tribunal identified a number of instances in the evidence it heard between paragraphs 48 and 57.
 - The Tribunal accepted that the disclosure of the list of properties would be of use to squatters and would be likely to lead to significant harm in the form of criminal activity (paragraph 63).
 - Based on the evidence it heard, the Tribunal considered that disclosure of the information would be likely to have a significant negative impact on the prevention of crime (paragraph 63).
17. Although the Commissioner appreciates the difference in the information requested in the Bexley case and the information in this case, he believes that the prejudice arguments in the Bexley case demonstrate that there would be prejudice to the prevention of crime in this case in

² Appeal numbers EA/2006/0060 and 0066

those circumstances where disclosure of the addresses of the recently deceased identify a residential property as empty.

18. The Trust did not submit further details in relation to the causal link between disclosure of the requested information and identity theft. However, in line with a previous decision on a similar case involving Westminster City Council³, the Commissioner considers that disclosure of the requested personal details to the world at large could enable a person to use such information to falsely obtain documents such as birth certificates, passports and driving licences which could then be used for the commission of crimes such as driving without insurance, fraudulent credit applications, committing bigamy, tax evasion, money laundering, drug smuggling, terrorism and people trafficking.
19. The Commissioner is satisfied that there is causal link between the disclosure of the requested information and a prejudice to the prevention of crime, and that the prejudice is real and of substance in this instance. He therefore finds that the second stage of the test from Hogan is satisfied.
20. When considering the third step as set out in Hogan, the Commissioner notes that the Trust has claimed that the stated prejudice 'would be likely to' occur. The Commissioner considers that this means there must be a "real and significant risk" of prejudice although the risk need not be more probable than not.
21. The Trust has not provided any specific crime statistics related to the area it is based on but the Commissioner notes that in statistics published by CIFAS, the UK's fraud prevention service, the number of identity fraud victims rose by 31% to 32,058 in the first three months of 2015 compared to the same period in 2014.
22. The complainant has said all the information needed to commit criminal activity such as theft of an empty property is already in the public domain. He said that anyone could get a list of the recently deceased using death certificates from the General Register Office (these would contain the deceased's name, dates of birth/death, last known address etc) and this could then be cross referenced with information contained on the land registry and the electoral roll to ascertain whether the deceased lived alone and then proceed to rob the property.
23. He has also said that the British Library publishes and regularly updates a list of all the recently deceased persons in the country, complete with full names, dates of birth/death, locality of death and a reference to

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/783218/fs_50454267.pdf

order a death certificate. He argued that while these do not detail whether the deceased had a public health funeral it would give a hypothetical member of the public everything they need to target the empty properties of the deceased. He said that, realistically speaking, it would not be difficult for them to work out which ones are empty, simply waiting outside for a period would determine this (although using the land registry and the electoral roll could also be a route to work out if the deceased lived alone) and that while it could be argued that this is perhaps a slightly convoluted route to the information, a determined criminal who is interested in targeting empty properties would most likely take it (especially as the information is free from the British library and available for a small fee from the General Register Office). He said that probate companies use this method all the time in their research so it's a widely used channel.

24. The complainant's argument is that because most of the information is already publicly available it is substantially more difficult to engage section 31. He believes that there is minimal, if any, increased risk in disclosing this information through the FOIA as all the data which might lead to the kind of crime being suggested is already in the public domain.
25. The Commissioner has considered the complainant's argument. However, he notes that the information which is already publicly available does not detail whether the deceased had a public health funeral which is the core of the request in this case. He has taken into consideration his own guidance on 'Information in the public domain'⁴ and believes that disclosure in response to this request would provide ready-collated information in a more easily useable form than obtaining information from the British Library or General Register Office and then taking time consuming steps to work out which properties are empty. He therefore considers that disclosure in response to this request would increase the risk of prejudice occurring over and above the current risk from publicly available information.
26. The complainant has also argued that in the Bexley case the existence of local organised gangs was taken into account, as was the exceptionally high crime rate of Westminster Borough in the Westminster case. He has said that the Trust in this case has not mentioned the existence of any such gangs and that local crime stats⁵ show that overall levels of crime in the area are substantially lower than those of Westminster, and most of it would not even be vaguely linked

⁴ <https://ico.org.uk/media/for-organisations/documents/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

⁵ <http://www.ukcrimestats.com/Subdivisions/UTA/2612/>

to the information requested. He has submitted that given this, and given that hundreds of other public authorities, particularly Councils, do disclose their details on public health funerals (some of which report higher crime stats) the Trust's stance in this case seem a bit trivial.

27. The Commissioner has considered the evidence the Trust provided and the complainant's arguments. He believes that the risk of an adverse effect to the prevention of crime is real and significant. He considers that despite the lower levels of crime in the area as opposed to Bexley and Westminster, the chance of prejudice being suffered from disclosure of the requested information is still more than a hypothetical possibility; it is a real and significant risk.
28. For the reasons set out above, the Commissioner considers that the Trust has satisfied all three stages of the prejudice test set out in Hogan and therefore accepts that the exemption at section 31(1)(a) is engaged. He has therefore gone on to consider the application of the public interest test associated with this exemption.

The public interest test

29. As the exemption under section 31(1)(a) is a qualified exemption, it is subject to a public interest test. In accordance with that test, as set out in section 2(2)(b), the Commissioner must consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Public interest arguments in favour of disclosing the requested information

30. The Trust stated the public interest arguments were broadly the same as those presented in the Westminster City Council case and are as follows:
 - Disclosure would give some transparency to the Trust's part in the process of administering the funerals, and estates, of the deceased in its area.
 - There is a case for arguing that disclosure would assist in the process of identifying those who have an entitlement to the estate of a deceased person.
31. The complainant submitted the following arguments:
 - Disclosure would add to Trust transparency and it is public money being spent on such funerals.
 - Disclosure could speed up probate work which, the complainant argues, actually reduces the threat of prejudice to law enforcement

as it means the legal owners of the deceased's property are located and can lodge their claim at the earliest possible juncture.

- Disclosure increases the likelihood of relatives being made aware of deceased's passing.
 - Once found, relatives may pay for the funeral (next of kin are often asked to do so when they are found) thus saving public money.
 - Speeding up the probate process will save both the Trust and the Government Legal Department (if there is an estate to refer) time and research in finding a next of kin which in turn would save public funds.
32. The Commissioner considers that the 'default setting' of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency, accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process.

Public interest arguments in favour of maintaining the exemption

33. The Trust again referred to the Westminster decision for the public interest arguments in favour of maintaining the exemption with the addition of the argument that the reputation of the NHS in providing a confidential service should be maintained. The remaining arguments were as follows:
- Withholding the information would protect the public purse from criminal activity in terms of financial impact as identity fraud costs the economy millions of pounds every year.
 - Maintaining the exemption would protect the availability of public resources which would otherwise be dedicated to the detection of identity fraud using deceased people's details.
 - For some member of the public withholding the information would reduce the risk of fraudulent activity on the estate. It is therefore in their interest to avoid losing time and money in dealing with fraudulent activity on their entitlement by withholding this information.
34. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudice to crime prevention.

Balance of the public interest arguments

35. As stated above, the Commissioner recognises that there is always some public interest in the disclosure of information. He also recognises that there is interest to certain members of the public who may have an entitlement to the estate of a particular deceased person's estate, and/or organisations enabling individuals to exercise that entitlement. However, he has not given this argument significant weight as there are other mechanisms in place for the administration of estates of persons who die intestate and without a known kin, such as the Bona Vacantia Division of the Government Legal Department. He notes that the routine publishing of estates that have been referred to the Bona Vacantia division has enabled more people to claim their entitlement from estates⁶.
36. In favour of maintaining the exemption, the Commissioner recognises that there is an inherently strong public interest in avoiding likely prejudice to the prevention of crime. The crime in this case would be likely to include a diverse range from anti-social behaviour, criminal damage, arson, organised groups stripping empty properties to identity fraud and the crimes that can be committed using false documents. The Commissioner accepts that tackling issues like these would involve significant public expense and believes it is in the public interest to protect property and to ensure that public resources are used efficiently. He also accepts that there is a strong public interest in avoiding personal distress to the direct victims of the crime and, in the case of crime related to empty properties, to those in the wider neighbourhood who may be affected.
37. Taking all of the above into consideration, the Commissioner decision is that the public interest in avoiding prejudice to the prevention of crime outweighs the public interest in disclosure in all the circumstances of this case.

⁶ <https://www.gov.uk/government/news/transparency-transforms-total-estates-claimed-by-relatives>

Right of appeal

38. 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

39. 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.
40. 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

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