

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2022

Public Authority: UK Health Security Agency (Executive Agency of the Department for Health and Social Care)

Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested details of infants who died of pertussis in 2012. The above public authority ("the public authority") relied on section 41 (breach of confidence) and 40(2) of FOIA (third party personal data) to withhold the information.
2. The Commissioner's decision is that the public authority has not demonstrated that either exemption is engaged and consequently is not entitled to rely on these exemptions.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information to the complainant.
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 3 April 2022, the complainant wrote to the public authority and requested information in the following terms:

"Please send me all the information you hold on the subject of the ages, in months or days, of the 14 infants who are listed as dying of confirmed pertussis in 2012."

6. The public authority responded on 3 May 2022. It relied on sections 40(2) and 41 of FOIA to withhold the information – although it confirmed that all the infants had been between 2 and 9 weeks old at the onset of the disease. The public authority upheld its position at internal review.

Reasons for decision

7. The following analysis explains why the Commissioner has concluded that neither of the exemptions apply.
8. In the Commissioner's view, the application of both exemptions turns on the question of whether the infants can be identified. If they cannot be identified, disclosure will not breach their confidence. Nor would it reveal the personal data of their surviving relatives.
9. The Commissioner does not consider that the infants in question are identifiable from the withheld information. Even if a person were able to identify every infant in the whole of England who died in 2012 and their age at death, that person would not be able to use that information alone to deduce which infants had died of pertussis. Equally, if a person already knew the identity of all 12 pertussis fatalities, they would not be able to use that information alone to link each infant with their age of death.
10. The only people who would be able to identify the infants from the withheld information would be those who already knew that a particular infant had died from pertussis and their age at death. If a person already has this information, disclosing the withheld information to them does not breach the confidence of the infants or their families – because nothing has been revealed to that person that they did not already know.
11. The same argument applies to surviving relatives (assuming that they can be linked to an infant at all). Disclosure would reveal nothing because those able to identify the families would already have to know the personal data that would be revealed. Therefore this information is not the personal data of the infants' families.
12. Without geographical or other locator information that would allow the withheld information to be segmented out, the Commissioner cannot consider that there is a realistic possibility of identification – except by

those who are already in possession of the information being withheld. The fact that the infants in question died ten years ago reduces the already-remote chance of identification further.

13. The Commissioner is not persuaded that either exemption is engaged therefore the public authority must disclose the information.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF