

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 1718 0724

Date of Response: 19 February 2018

Information Requested:

“Please send me copies of all correspondence, reports of meetings and inspectors records for your investigation / inspection of Valley Supported Living, leading up to your most recent report about the organisation.

I do not wish to see any personal details about service users and their care - I am interested mainly matters relating to financial safeguarding and management”

The Information Access team has now coordinated a response to your request.

CQC has considered your request in accordance with the Freedom of Information Act 2000 (FOIA). Our main obligation under the legislation is to confirm whether we do or do not hold the requested information.

In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold recorded information in relation to this matter. We consider the information request engages a number of exemptions set out in the FOIA, primarily section 14 where the burden of compliance is unreasonable.

We are sorry to advise you that CQC will not provide the requested information. We have made this decision based upon the volume of information that you have requested and the subsequent burden that would be caused to CQC in complying with the request in its entirety.

It is not CQC’s opinion that your request is made with vexatious intent, or that you have acted unreasonably in your dealings with CQC. The exemption is applied only in consideration of the significant and disproportionate burden that would be caused by complying with the request in full.

We are therefore unable to provide all of the information that is captured by the scope of your request.

In addition to this we also consider that the exemption set out at section 31 to be engaged, as disclosure of the requested information could prejudice ongoing regulatory functions of CQC or other public authorities.

You can find out more about the exemptions in the 'The Purpose of FOIA and Exemptions on disclosure' section below.

Although we cannot provide all of the requested information, we have provided an overview of our inspection below. In addition to this, the 'Advice and assistance' section below contains further information you may find of assistance.

Our Inspection of Valley Supported Living Ltd

We carried out this inspection under Section 60 of the Health and Social Care Act 2008 as part of our regulatory functions. This inspection was planned to check whether the provider was meeting the legal requirements and regulations associated with the Health and Social Care Act 2008, to look at the overall quality of the service, and to provide a rating for the service under the Care Act 2014.

This inspection took place on 21, 22 and 26 June 2017. We gave the provider 24 hours' notice because the service is small and we needed to be sure that someone would be available for the inspection. The inspection was carried out by one adult social care inspector.

Prior to the inspection the provider sent us a Provider Information Return (PIR). This is a form that asks the provider to give some key information to us about the service, what the service does well and any improvements they plan to make.

Prior to the inspection visit we received concerning information relating to changes to the management team, the availability and skills of staff and lack of clear records such as support plans and risk assessments. The local authority contract monitoring team and commissioning teams, the police and other health and social care professionals shared their concerns about the service with us.

You can find out more about this inspection on our website:

www.cqc.org.uk/location/1-124801778#accordion-1

The location was archived on 18 January 2018.

The Purpose of FOIA and Exemptions on disclosure

The purpose of FOIA is to ensure transparency and accountability in the public sector. It seeks to achieve this by providing anyone, anywhere in the world, with the right to access recorded information held by, or on behalf of, a public authority.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The main principle behind FOIA is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

A disclosure under FOIA is described as “applicant blind” meaning that it is a disclosure into the public domain, not to any one individual.

Because of this, FOIA also recognises that there may be valid reasons for withholding information by setting out a number of exemptions from the right to know, some of which are subject to a public interest test.

Exemptions exist to protect information that should not be disclosed into the public domain, for example because disclosing the information would be harmful to another person or it would be against the public interest.

A public authority must not disclose information in breach of any other law.

When a public authority, such as CQC, refuses to provide information, it must, in accordance with section 17 of FOIA, issue a refusal notice explaining why it is unable to provide the information.

Section 14 and the information requested

We consider that the exemption set out at section 14(1) to be engaged.

Section 14(1) is concerned with the nature of the request rather than the consequences of releasing the requested information.

The request covers a substantial volume of information and we have real concerns about the need to potentially protect information contained within the scope of the request (which if it released into the public domain would cause harm, for example, information which may identify people who contacted us in confidence, or whose records we reviewed during or prior to the inspection).

This is further complicated as the potentially exempt information cannot easily be isolated because it is dispersed throughout the requested material.

In reaching our conclusion, we have considered that your request fulfils the criteria set out in the ICO guidance for section 14, in particular the burden your request would pose on our limited resources.

The ICO describe this criterion as:

‘The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be

expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.'

The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC).

In this particular instance, the request is likely to cause a disproportionate or unjustified level of disruption, taking CQC staff away from their day to day duties. The inspection team has indicated that locating and extracting the requested information has taken them away from their regulatory duties for several days; while the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on CQC, taking both the inspection team and other members of staff away from their daily duties for extensive periods of time. We can advise you that locating and extracting the information and our preliminary consideration of the information requested has taken over 50 hours.] Based on this, we consider compliance with your request to be a disproportionate effort, especially as CQC have published the report into our findings at the service.

Please note that section 14(1) is only applied to the request itself and not the individual making it.

It is not CQC's opinion that your request is made with vexatious intent, or that you have acted unreasonably in your dealings with CQC. The exemption is applied only in consideration of the significant and disproportionate burden that would be caused by complying with the request in full.

We are therefore unable to provide all of the information that is captured by the scope of your request.

Section 12 of FOIA provides an exemption from the obligation to provide information where the cost of doing so would exceed the 'appropriate limit'. This limit for organisations such as CQC is £450. Working time may be calculated at the rate of 25 per hour for the purposes of calculating whether complying with a request is likely to exceed this limit. Therefore, a request that will require more than 18 working hours to respond to may be refused under section 12.

However, the calculation for section 12 may only include the time required to identify, locate and extract the requested information. Time for activities such as transcription, consideration, redaction and consultation on proposed disclosure cannot be included. Such considerations can only be taken into account using the section 14 exemption. Although this section of the Act is named 'Vexatious or repeated requests', the intention of the request does not need to be vexatious and we repeat that it is not our position that you made your request with such an intent.

We need to ensure great care in finding and redacting any confidential information which may identify people who spoke with CQC in confidence, or whose records we reviewed during the inspection.

It is important that we carefully review, assess and appropriately consult (where necessary) on information that we are considering for disclosure under FOIA.

As of today, we have spent over 50 hours preparing information for disclosure for this request.

We therefore calculate that, to fully comply with your request and provide all of the information held would take at least a further 40 working hours, approximately. We are satisfied that this would represent an excessive burden to CQC as it would draw members of the Information Access Team away from the handling of other requests, and inspection team colleagues from their regulatory work.

We are sorry that we have been unable to communicate this decision to you until the final day of the 20 working day deadline. It is not our intention to delay the response and it is not our usual practice to do so. This delay has been partly caused by a high workload and also because we were in genuine deliberation as to whether or not to refuse your request. It is not a matter that we take lightly and therefore we have taken some time to reach a final decision. This included the time required to identify, locate and scan the relevant documents and for them to be passed to the Information Access Team for review. It also included the time required to assess and estimate how long it would take to prepare all of the requested documents for disclosure, and the time to discuss and make the decision on applying relevant exemptions.

Other exemptions that are engaged

Section 44 – Prohibitions on disclosure

Personal information relating to and identifying individual people within the recorded information has been obtained by CQC in confidence in our role as the regulatory body.

Where personal information has been obtained or received by CQC, in circumstances requiring confidentiality disclosure may be a criminal offence under section 76 of the Health and Social Care Act 2008.

Section 76 of the Health and Social Care Act 2008 states:

"Disclosure of confidential personal information

(1) This section applies to information which—

*(a)has been obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and
(b)relates to and identifies an individual.*

(2)A person is guilty of an offence if the person knowingly or recklessly discloses information to which this section applies during the lifetime of the individual.

(3)A person guilty of an offence under this section is liable—

*(a)on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
(b)on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both."*

Disclosure is only permitted within the scope of "Defences" provided by section 77 of the Health and Social Care Act 2008.

No defence is applicable in this case therefore we consider that disclosure of confidential personal information within the documentation would be an offence.

We therefore consider section 44(1)(a) of FOIA to be engaged.

Section 44(1)(a) states:

"Prohibitions on disclosure.

(1)Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

(a)is prohibited by or under any enactment,"

Section 44 is an absolute exemption which means that if information is covered by any of the subsections in section 44 then it is exempt from disclosure under FOIA.

No public interest test is required for this exemption.

Section 40 – Personal information

We also consider the exemption from the right to know provided at section 40(2) of FOIA to be engaged.

Section 40 of FOIA states:

"40 Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied.*

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or*
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).”

Individuals, such as staff and service users as well as other third parties, who can be identified in the recorded information, would have a reasonable expectation that a public authority, such as CQC, would not release information into the public domain under FOIA, which in turn could identify them. This includes information that, combined with other information already available, could allow individuals to be identified.

The Data Protection Act 1998 regulates the use of "personal data" and the processing of that data. There are eight Data Protection principles which are listed within schedule 1 of the Data Protection Act 1998.

We believe that releasing the information could allow for the identification and therefore potentially be a breach of principles 1, 2 and 6.

This exemption applies in any case where disclosure of the requested information into the public domain would be a breach of any of the principles. In particular, the first principle requires that disclosure of the information must be fair and lawful.

The purpose of the Data Protection Act 1998 is to protect people's private information and to ensure that it is handled properly.

CQC considers that it would be a breach of the principles of the Data Protection Act 1998 to disclose the requested information because in the interests of fairness the individual(s) in question would not expect us to share their personal data with the wider public under FOIA.

No public interest test is required for this exemption.

Section 41 – Information provided in confidence

We consider some of the information to be subject to the exemption from the right to know provided at section 41(1) of FOIA because it relates to information provided to CQC in confidence.

Section 41(1) states:

“(1) Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”*

Section 41 applies where information has been obtained from any other person or organisation and where disclosure could constitute an actionable breach of confidence.

Our website advises “We treat information we receive from people who use services, professionals and others as confidential.”:

www.cqc.org.uk/content/privacy-statement

Our code of practice details how we obtain, handle and use personal information.

The code can be viewed or downloaded through the above link.

Individual(s) (such as members of the public and whistle blowers) who have shared information with CQC have done so with a reasonable expectation of confidentiality.

They would not expect CQC to disclose the information into the public domain under FOIA.

A duty of confidence arises when one person (the “confidant”) is provided with information by another (the “confider”) in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. If there is a breach of confidence, the confider or any other party affected (for instance a person whose details were included in the information confided) may have the right to take action through the courts.

CQC considers that disclosure of this information would be a potentially actionable breach of that duty of confidence therefore CQC will not provide the information covered by this exemption.

Individuals would not expect a public authority such as CQC to share information, which could in turn identify them, with the wider public under FOIA.

We can confirm that in making this decision we have referred to guidance issued by the Information Commissioner’s Office (ICO).

The ICO is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Specifically the guidance recognises that the information need not be highly sensitive. The preservation of confidences is recognised by the courts to be an important matter and one in which there is a strong public interest.

We consider that there is a strong public interest that CQC, as the regulatory body, has an important role to perform, and should not be seen to be disclosing certain information about individuals and organisations without their consent.

Section 31 – Law enforcement

We are concerned that providing information that has been shared by individuals, such as staff and service users, members of the public and whistle blowers, may discourage individuals from providing information to CQC in the future, if they perceive that information that they have provided in confidence to CQC has subsequently been disclosed into the public domain under FOIA.

Although we may potentially identify the individual to another public body or the police, the individual would have a reasonable expectation that CQC would not disclose information into the public domain under FOIA which could identify them.

We therefore consider that release of this information could potentially prejudice our regulatory function and that of other public authorities.

If individuals are discouraged from sharing information and concerns with CQC, or if CQC were to disclose information that prejudiced the role of other public authorities, this may impact upon our role as the regulatory body.

We use information of this nature to assist in our role of ensuring the quality and safety of care services.

If individuals are discouraged from sharing information this may impact upon the course of our duties leading to certain events going undetected and a resultant decline in the standards of care provided at care services to members of the public.

We consider the arguments above to also apply to the regulatory function of local authorities who are responsible for conducting safeguarding investigations and other public authorities.

We therefore consider this information to be subject to the exemption from the right to know provided at section 31(1)(g) of FOIA as it relates to 31(2)(c) of FOIA.

Section 31 states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(2) The purposes referred to in subsection (1)(g) to (i) are—

c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,”

Under this exemption, CQC can withhold any disclosure which would prejudice the exercise by any public authority of its functions relating to protecting the public from misconduct, incompetence, dishonesty or malpractice.

“Prejudice” may be the obstruction of our regulatory function in determining whether a provider is compliant with the regulations and standards.

Section 31 is a qualified exemption which means that CQC is required to take into account the public interest in reaching a decision on disclosure. The public interest test requires us to consider whether the public interest in favour of disclosing the information outweighs the public interest in withholding the information.

In conducting this test we have referred to guidance issued by the Information Commissioner’s Office (ICO).

Having considered the public interest test, we consider there is a strong assumption that the public interest favours withholding this information as there is genuine danger of prejudice. The guidance issued by the ICO also recognises that “Given the strong public interest in protecting the activities listed in section 31, it is likely that this will often outweigh the public interest in releasing the information.”

However we do recognise that this should not be adopted as a default position and that the public interest must be considered on an individual case by case basis.

This exemption is intended to safeguard the exercise of public functions intended to protect the public from harm caused by wrongdoing, incompetence or mis-management.

In conducting this test, we have considered the following factors in favour of disclosure:

- there is a general public interest that CQC are open and transparent in the way we function
- the public interest that public authorities are accountable for their actions

Against this, we have considered the following factors against disclosure of the information:

- the strong public interest in avoiding likely prejudice to the regulatory function of CQC
- disclosure of this information would potentially discourage individuals from sharing information of concern with CQC in the future
- disclosure of this information would potentially impact CQCs working relationships with other public bodies.
- disclosure of this information may impact upon the privacy of the individual who shared information with CQC and be a breach of their Data Protection rights
- disclosure of this information could be a criminal offence under section 76 of the Health and Social Care Act 2008 (without any defence being applicable)
- disclosure of this information could obstruct the regulatory functions of CQC or other public authorities in determining whether registered care providers are compliant with the relevant regulations, standards and the law.

The public interest would not be served by disclosing information requested, which would prejudice the regulatory functions of CQC or of another public authority.

Having considered the above factors, it is our view that the public interest in withholding some of the requested information is greater than the public interest

that may be served by disclosure therefore CQC will not provide the requested information. We consider that the public interest is met in our published report for this service. The link has been provided earlier in this email.

Advice and assistance

Under section 16 of the Freedom of Information Act 2000 (and in accordance with the section 45 code of practice) we have a duty to provide you with reasonable advice and assistance.

Where section 14 is engaged we would not usually provide any of the requested data. However, as part of our initial consideration of your request we prepared the inspection notes, relating to our June 2017 inspection, for disclosure. They contain some references to financial matters. Please find them attached. We hope they are of some assistance to you.

We can also advise you that there are other provisions available for accessing information, such as in accordance with the Data Protection Act 1998 or via a court order.

If you need any independent advice about individual's rights under information legislation you can contact the Information Commissioner's Office (ICO).

The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The contact details for the ICO are detailed below.

There is useful information on the ICO website explaining how individuals can access official information:

www.ico.org.uk/for-the-public/official-information

CQC Complaints and Internal Review procedure

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review.

Please be aware that the review process will focus upon our handling of your request and whether CQC have complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise concerns about the provision of care or the internal processes of other CQC functions.

If you are unhappy with other aspects of the CQC's actions, or of the actions of registered providers, please see our website for information on how to raise a concern or complaint:

www.cqc.org.uk/contact-us

To request a review please contact:

Information Access
Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

E-mail: information.access@cqc.org.uk

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the internal appeals process has been exhausted.

The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone Helpline: 01625 545 745

Website: www.ico.org.uk