

Alan Bunn

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Ref: 8877

**Information Governance**  
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Date: 4 December 2019

Dear Mr Bunn,

### **Freedom of information request**

Thank you for your request for information as outlined below

*'Please provide copies of the following DPIAs listed in your DPIA register*

- 1. Electronic Staff Record*
- 2. Artificial Intelligence in Customer Calls'*

Your request was received on 6 November 2019. I can confirm that the NHS Business Services Authority does hold information within the terms of your request.

### **Artificial Intelligence in Customer Calls**

A copy of the information is attached with some redactions. The information redacted has been withheld under the following exemptions. Unless otherwise annotated within the document, redactions are made under Section 40(2) of FOIA.

### **Section 40(2) – Personal Data**

Please be aware that I have decided not to release full details of all staff as this information falls under the exemption in section 40 subsections 2 and 3 (a) of the Freedom of Information Act.

This is because it would breach the first data protection principle as:

- a) It is not fair to disclose these people's personal details to the world and is likely to cause damage or distress to staff.
- b) These details are not of sufficient interest to the public to warrant an intrusion into the privacy of those staff.

Annex A at the end of this letter sets out the exemption in full.

### **Section 31(1)(a) – Prevention or Detection of Crime**

Some information has been withheld as it falls under the exemption in Section 31(1)(a) of the Freedom of Information Act. In applying this exemption we have balanced the public

interest in withholding the information against the public interest in disclosing the information. Annex B at the end of this letter sets out the exemption in full, as well as the factors considered when deciding that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Electronic Staff Record (ESR)**

The FOI Act obliges us to respond to requests promptly and in any case no later than 20 working days after receiving your request. However, when a qualified exemption applies to the information, we need to assess whether disclosure would favour the public interest, taking all relevant factors into account. The Act therefore allows the response time to be longer than 20 working days, and a full response must be provided within a reasonable timescale. We do, of course, aim to make all decisions within 20 working days, including in these cases. In this particular case, however, we have not yet reached a decision on where the balance of the public interest lies in terms of disclosure of certain information contained within the DPIA for the ESR system.

We estimate that it will take an additional 20 working days to make this decision. Therefore, we plan to fully respond by 6 January 2019. If it appears that it will take longer than this to reach a conclusion, we will keep you informed.

The specific exemptions which apply in relation to your request are:

Section 43(2) – Commercial Interests and  
Section 31(1)(a) – Prevention or Detection of Crime.

We have also considered that the exemption provided for under section 40(2) of the Act applies to the information requested. Although this is an absolute exemption which doesn't allow for a public interest extension, the document as a whole cannot be released until the above public interest exemptions have been considered.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of my decision, you should write within 6 months of the date of this letter to:

Chris Gooday  
Information Governance Manager  
NHS Business Services Authority  
Stella House  
Goldcrest Way  
Newburn Riverside Business Park  
Newcastle upon Tyne  
NE15 8NY

Details of how we will handle your review request are available on our website at:

<https://bit.ly/2Sjdk2H>

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision.

The Information Commissioner can be contacted at:

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

Tel: 01625 545 745

Fax: 01625 524 510

Email: [enquiries@ico.gsi.gov.uk](mailto:enquiries@ico.gsi.gov.uk)

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

A handwritten signature in black ink, appearing to read 'CDunn'.

**Chris Dunn**  
**Information Governance Specialist**

## Annex A

### Section 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 does not fall within subsection (1), and
- b. the first, second or third condition below is satisfied.

(3A)

The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i) would (apart from this Act) contravene any of the data protection principles, or

(ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;

(b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);

(c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

(d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section

(6) In this section—

“the data protection principles” means the principles set out in—

(a) Article 5(1) of the GDPR, and

(b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(7) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.”

## Annex B

### Section 31 – Law Enforcement

(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—

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

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

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

| <p>(g) the purpose of protecting the property of charities from loss or misapplication,</p> <p>(h) the purpose of recovering the property of charities,</p>  |  |
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| Factors for disclosure   | Factors for withholding  |
| <ul style="list-style-type: none"> <li>• Public accountability</li> <li>• It is information which shows that security measures are in place which gives the public assurance around the security of their personal data</li> </ul> | <ul style="list-style-type: none"> <li>• Disclosing specific details around what security measures are in place could be useful to people wishing to breach that security and access personal data</li> <li>• Breaches caused by such a disclosure would cause damage/distress to members of the public</li> <li>• Such breaches may bring a financial impact on the business in terms of rectifying/restoring systems as a result</li> <li>• Litigation/ICO enforcement as a result of such a breach would be costly to the taxpayer</li> </ul> |

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| <p><b>Reasons why public interest favours withholding information</b></p> <ul style="list-style-type: none"> <li>• I consider that the public accountability in releasing this information is outweighed by the possibility of a breach of security which could result from disclosure of security details.</li> </ul> |
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