

Alan Bunn

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Ref: 8877

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Date: 6 January 2020

Dear Alan Bunn

Subject: Freedom of information request

I am writing to confirm that I have now completed my search for the information which you originally requested on 6 November 2019 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'*

Artificial Intelligence in Customer Calls

This information was supplied to you with redactions on 4 December 2019. Some information was withheld under the following exemptions:

Section 40(2) – Personal Data

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

The annexes at the end of this letter set out the exemptions in full.

ESR

A copy of the document is attached with redactions. Some of the information has been withheld under the below exemptions of FOIA. Labels have been inserted to highlight what exemption each redaction relates to.

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 43(2) – Commercial Interests

The information you requested is being withheld as it falls under the exemption in section Section 43(2) 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.

Following the public interest extension, it was deemed that no information should be withheld under this exemption, in relation to the ESR DPIA.

Side Notes

Regarding section 6.3 of the document, I am able to inform you that solutions have been found to some technical issues which had prevented erasure of certain records.

Regarding section 8.15, the wording in this section is no longer deemed relevant and it should be disregarded.

Please note that this information will be published on our Freedom of Information disclosure log at:

https://apps.nhsbsa.nhs.uk/FOI/foiRequestDetail.do?bo_id=8877

Your personal details will be removed from the published response.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988 and is subject to NHSBSA copyright. This information is licenced under the terms of the Open Government Licence detailed at:

<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

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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, please write within 40 working days 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 your complaint, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally, the ICO cannot make a decision unless you have exhausted the NHS Business Services Authority's complaints procedure.

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

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

Yours sincerely



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 43 - Commercial interests

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none">Public accountability	<ul style="list-style-type: none">The contract relating to IT provision for ESR is due for reprocurement.Disclosure of the staffing arrangements of the incumbent supplier would give competitors an unfair insight into how the incumbent handles the service.

Reasons why public interest favours withholding information

- I consider that the public accountability in releasing this information is outweighed by the potential detrimental effect on the incumbent supplier should it seek to bid for the contract in an upcoming procurement process.

Annex C

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

<p>Reasons why public interest favours withholding information</p> <ul style="list-style-type: none"> • 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.
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