



Independent Safeguarding Authority

PO BOX 181
Darlington
DL1 9FA
www.isa-gov.org.uk

M Sowerby
request-36892-78f9d8f2@whatdotheyknow.com

28 July 2010

Dear Sir/Madam,

Freedom of Information Request Reference No. ISA/IG/FOI/159/2010

I write in connection with your request for information which was received by the Independent Safeguarding Authority (ISA) on 14 July 2010. I note your request for information was as follows:

"I was informed by CQC that a member of staff at Hadrian Park Care Home in Billingham was referred to the POVA register in January 2007, can you tell me if the referral was confirmed and that person is now barred from working with vulnerable adults."

The ISA is not currently subject to the Freedom of Information Act, however your request has been considered in the spirit of the legislation.

We are of the view that Section 41(2) of the Freedom of Information Act applies to your request which relates to information which may be provided in confidence and therefore the ISA neither confirms nor denies whether the information you requested is held.

Please note, for your information that if section 41(2) of the Freedom of Information Act had not applied to your request (and should the ISA have held the information requested), we are of the view that your request would be refused under separate exemption provisions within the Freedom of Information Act.

In this context, the request would be likely to constitute a request for either your own or another person's (personal data) as defined by the Data Protection Act 1998. Therefore it would be exempt from disclosure by virtue of the personal data exemption in section 40 of the FOIA. If you were requesting your own personal data then Section 40 (1) exempts the ISA from disclosing that information as there are adequate provisions under the Data Protection Act 1998 for you to request this information

Alternatively, if you request information about another individual, disclosure would be exempt under section 40 (2), read with Section 40 (3) (a) (i) of the Freedom of Information Act, as the disclosure of the information would be in breach of the Data Protection Principles.

In addition, the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009, Article 21(5) – 21(7) states that:

- (5) *ISA may, at the request of a person (X) who meets the requirement specified in paragraph (7), inform that person whether a person (Y) falls within paragraph (6).*
- (6) *Y falls within this paragraph if Y is—*
 - (a) *included in the list kept under section 1 of the 1999 Act;*
 - (b) *included in the list kept under section 81 of the 2000 Act;*
 - (c) *subject to a direction under section 142 of the 2002 Act;*
 - (d) *included in a barred list.*
- (7) *The requirement is that X satisfies ISA that X has a legitimate interest in knowing whether Y falls within paragraph (6)*

In accordance with this power, the ISA operates a system for persons with a 'legitimate interest' to request whether a specific person is barred from working with children or vulnerable adults. While there is no definition of a 'legitimate interest' contained in the Safeguarding Vulnerable Groups Act, the ISA may consider requests from persons or organisations that require the information for the purpose of, but not limited to:

- 1) Protecting children or vulnerable adults in general or a child or vulnerable adult in particular;
- 2) Prevention or detection of crime e.g. where it is reasonably thought a barred person may be engaged or attempting to engage in a regulated activity from which they are barred; or
- 3) Where a regulated activity provider or professional body is considering whether or not a person should be permitted to engage in or return to regulated activity.

If a person or body can provide evidence of a 'legitimate interest', they may request the information by writing to the ISA at the PO Box address included in this letter. Should you consider that you have a legitimate interest in knowing whether the person is barred from working with children or vulnerable adults, then I invite you to write again detailing why that is the case.

I appreciate that some of the information is based on aspects of different legislation and hope that the explanation provided is clear. Please be assured that the ISA is committed to protecting what is sensitive personal information whilst at the same time not hindering those who have a legitimate reason for having access to either their own or others information.

The advice contained within this letter should not be taken as evidence that the information you have requested is or is not held by the ISA.

I trust this response fully addresses your questions; however, if you are dissatisfied with the handling of your request for information you can lodge a complaint with the Independent Safeguarding Authority to have your request reviewed. The Independent Safeguarding Authority must be notified of your intention to complain within two months of the date of this response to your request.

Complaints should be made in writing and addressed to:

Performance Manager
Independent Safeguarding Authority
PO BOX 181
Darlington
Co Durham
DL1 9FA

In all possible circumstances the Independent Safeguarding Authority will aim to respond to your complaint as soon as practicable and in any case within two months.

Yours sincerely,

Information Governance Officer