



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0204

**Determined, by consent, on written evidence and submissions
Considered on the papers on 28 March 2019**

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Ms Anne Chafer
and
Ms Marion Saunders

Between

Nicola Cardozo
and
The Information Commissioner

Appellant
Respondent

DECISION AND REASONS

THE REQUEST

1. The Appellant sought to open a pharmacy at her residential address and her application to do this had been considered by the General

Pharmaceutical Council (GPhC). It is not necessary to go into the details of what happened with her application. Suffice to say that on 11 January 2018 the Appellant wrote to the GPhC and requested information in the following terms:

“Under the freedom of information act and Data Protection Act (if applicable) I would kindly request details of the following:

- Details all correspondence internal and external, files notes or other information in relation to our property at [postcode redacted].
- Please ensure this includes all electronically stored data and any information contained offline.”

2. On 5 February 2018 the GPhC provided the Appellant with information which included: -
 - (a) correspondence between the GPhC and the complainant,
 - (b) internal correspondence and pages from the inspector’s notebook.
3. Some information was withheld by the GPhC on the basis that it was personal information relating to third parties (section 40(2) FOIA).
4. Also on 5 February 2018, the Appellant asked the GPhC for an internal review. Subsequently, the GPhC wrote to the Appellant to say that all the information within the scope of the request had been provided and that no documents relating to the request had been withheld or deleted.
5. The Appellant contacted the Commissioner on 19 February 2018. She complained that the GPhC had not, in fact, identified all the information it held that fell within the scope of her request.

THE DECISION NOTICE

6. The Commissioner's decision notice is dated 24 August 2018. We note that although the Appellant's initial request had cited both the Data Protection Act 1998 (DPA) (which would be the appropriate legislation for seeking a person's own personal data) and FOIA, the Commissioner only has jurisdiction to consider complaints about the operation of FOIA. This explains the approach that the Commissioner took in the decision notice.

7. Thus the Commissioner said at paragraph 9 of the decision notice: -

Upon review of this case, the Commissioner's view was that it was appropriate to exercise her discretion to consider whether the information requested by the complainant would constitute her own personal data and hence would be exempt under section 40(1) of the FOIA. The following analysis covers section 40(1).

8. Section 40(1) FOIA provides an exemption for information that is the personal data of the requester. Once information is identified as the personal data of the requester then it cannot be disclosed under FOIA. The DPA was in force at the time of the request. Section 1(1) DPA provides a definition of personal data as follows: -

"...data which relate to a living individual who can be identified
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

9. The Commissioner thus concluded: -

13. ...It is clear from the wording of the complainant's information request that all information falling within its scope must be about her own application to open a pharmacy in her property.

14. The Commissioner's view is that there are two grounds on which this information relates to the complainant; first as it relates to her property and, secondly, as it relates to her application to open a pharmacy. The approach of the Commissioner is that addresses

are the personal data of the occupiers. Information about an individual's property is linked to them and has biographical significance for them.

15. As to the second ground – that the requested information relates to her application to open a pharmacy – the Commissioner considers it clear that information about that application is also linked to the complainant and has biographical significance for her. For these reasons, the Commissioner is satisfied that the requested information relates to the complainant.

10. The Commissioner said that she had seen some of the information that had been identified by GPhC (and which has, in any event, been disclosed to the Appellant as explained above), and concluded that the Appellant was identifiable by name in the material. Therefore, the information was exempt from disclosure by virtue of s40(1) FOIA and the GPhC was not obliged under FOIA to comply with the Appellant's request.

11. The Commissioner ends the decision notice by stating that she expects GPhC to reconsider the Appellant's request as a subject access request under the DPA. The Commissioner does not comment upon the fact that the Appellant clearly referred to the DPA in her initial request.

THE APPEAL

12. The Appellant appealed against the decision notice. The Appellant's grounds of appeal complain that: -

- (a) The GPhC only dealt with the case under FOIA when her original request referred to both FOIA and DPA.
- (b) She should not have to make another application for information.
- (c) The GPhC had previously said that no information was being withheld, and then subsequently disclosed information.

- (d) The Commissioner has not considered offences under s77 FOIA (offence of altering etc. records with intent to prevent disclosure).
- (e) The Commissioner has not fully considered whether further information has been withheld
- (f) The Commissioner has not considered other aspects of FOIA and/or the Code of Practice.

13. The Commissioner's brief response to the appeal points out that: -

- (a) If the information requested is within s40(1) FOIA then it must be exempt.
- (b) There was evidence that the GPhC had not initially disclosed emails which it subsequently disclosed, and the case had been referred to the Commissioner's criminal investigation team, which had decided not to take any action under s77 FOIA.
- (c) In any event, s77 FOIA is outside the Tribunal's remit.
- (d) There is no evidence that further information is being withheld.
- (e) The Code of Practice is not binding, and it is not compulsory for a public authority to follow it.

DECISION

14. The simple answer to this case is that the Commissioner has, in our view, taken the right approach in relation to the information sought in the request. The request was for details of 'all correspondence internal and external, files notes or other information in relation to our property'. The postcode of the property was provided. It is the same postcode that the Appellant has included in her full address in the initial request on 11 January 2018.

15. It seems to us that the Commissioner's reasoning in the decision notice that information which relates to a person's address is 'personal data' for the purposes of s40(1) FOIA, is correct. The Appellant's grounds of appeal do not contend otherwise. Therefore, by definition, all the information about that address as requested by the Appellant must be 'personal data' and exempt from disclosure.
16. It does seem to be the case that at least one email has been disclosed by GPhC which does not relate to the Appellant's address. It appears that this is information which is outside the scope of the request that GPhC has decided to disclose in any event. However, this has no bearing on the Commissioner's decision in relation to the request.
17. Having considered the papers, we understand the frustration of the Appellant about the way her request has been handled. She specifically made the request under the FOIA and the DPA but it appears that GPhC dealt with it mainly (at least) as a FOIA request. When the Appellant complained to the Commissioner, the complaint could only be considered within the remit of FOIA. As, in fact, the Appellant was seeking personal data, the information sought was exempt from FOIA.
18. As the Commissioner states we have no role in deciding whether a criminal case should be brought for possible offences under s77 FOIA.
19. The Commissioner is also correct that it is not compulsory for a public authority to comply with the Code of Practice.
20. It seems to us that all the information sought has now been disclosed to the Appellant. Certainly, we have no evidence that there is further undisclosed information. The Commissioner has urged the GPhC to reconsider the case under the DPA. We hope that has been done by now, but if it has not, then, if there is any further personal data which relates to

the Appellant's property which has not, in fact, been disclosed, we would expect it to be disclosed (as far as it can be under the DPA) as a result of that reconsideration (albeit that that is a matter strictly outside our remit).

21. For the reasons stated this appeal is dismissed.

Signed Stephen Cragg QC

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 18 April 2019.

(Case considered by Panel on 28 March 2019).