

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2024

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle Upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific surgery. The Care Quality Commission ("the public authority") disclosed some information but also withheld information, citing section 31 (law enforcement) of FOIA.
2. The Commissioner's decision is that the public authority was correct to withhold the information it did under section 31.
3. The Commissioner does not require further steps.

Request and response

4. On 11 August 2023, the complainant requested:
 - "1) Detail of the CQC data review of the Coggeshall Surgery dated 8 June 2023.
 - 2) Detail of the CQC review of information and data relating to the Coggeshall Surgery dated 6 July 2023."

5. The public authority responded on 25 August 2023. It disclosed some information, including the surgery's current CQC rating and details of its registered manager. It also signposted the complainant to publicly available data that the public authority considered as part of its review of the surgery.
6. However, the public authority withheld the following information under section 31(1)(g):
 - Details of whether the surgery is subject to any ongoing or planned regulatory activity.
 - Any safeguarding, whistleblowing or incident reports.
 - Complaints received about the surgery.
 - Whether the surgery is on the public authority's risk register.
7. The complainant requested an internal review on 31 August 2023. They argued that the requested information should be in the public domain.
8. Following an internal review the public authority wrote to the complainant on 29 September 2023. It explained that the complainant's request of 11 August 2023 had two possible interpretations:

"For example "detail" of the 2 reviews could be interpreted as a request for a description of the review that was conducted, or could be interpreted as a request for any formal record of the review and outcome, or as a request for all records and data held by CQC in relation to the reviews..."
9. It clarified that:

"These reviews are not regulatory inspections and we do not use the review to decide or change the provider's rating. The purpose of the review is to identify whether we have any evidence that tells us that we need to re-assess the rating or quality of care of the service at that time. Where we have evidence that suggests we do need to undertake such a re-assessment then this may lead to an inspection..."

At the reviews in June and July 2023 we did not find evidence that we need to carry out an inspection of reassess our rating. This review outcome was published on our website."
10. The public authority upheld its position to withhold all records and data held in relation to the review (i.e. the information listed in paragraph 6) under section 31.

Scope of the case

11. The complainant is concerned that the public authority failed to request any clarification in relation to their request. They are also concerned with the public authority's decision not to provide the detail "i.e. the reason(s) for, and the issues considered/assessed, in respect of 8 June and 6 July 2023 reviews of the Coggeshall surgery."
12. The Commissioner acknowledges that the request had two potential interpretations. However, he's satisfied that the public authority appropriately addressed each interpretation before its internal complaints procedure was exhausted. Therefore, he doesn't consider it appropriate to consider this matter any further.
13. What's left for the Commissioner to consider is whether the public authority was correct to withhold the information it did under section 31.

Reasons for decision

Section 31 – law enforcement

14. Section 31 of FOIA 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."

15. The public authority is the independent regulator of health and social care in England. It gets its regulatory powers from the Health and Social Care Act 2008, the Mental Health Act 1983 and the Health and Safety at Work Act 1974.
16. The Commissioner understands that the public authority has powers, under the Health and Social Care Act 2008, to enter and inspect premises where regulated activities are being carried out.

17. As the public authority has explained, the reviews in question were carried out in order to ascertain if the quality of care, or rating, of the service needed re-evaluating which it didn't. In other words, the public authority was ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
18. In order for section 31 to be engaged appropriately, the public authority must be able to demonstrate the disclosure of the requested information would, or would be likely, to prejudice its ability to carry out its regulatory activities.
19. The public authority has explained:
 - "disclosure of this information would potentially discourage other organisations from sharing information with CQC, if they perceive information would be disclosed into the public domain, under FOIA.
 - disclosure of this information could obstruct our regulatory function in determining whether registered care providers are compliant with the relevant standards and regulations
 - disclosure of this information would bypass our systems of checks and controls under the Health and Social Care Act 2008
 - disclosure of this information could prejudice CQC's regulatory relationship with providers and other public authorities."
20. The Commissioner has considered the information that's actually being withheld and the public authority's arguments. He agrees that disclosure would be likely to result in the prejudice described above and so he's satisfied section 31(1)(g) is engaged at the lower threshold of prejudice.
21. Since section 31 is a qualified exemption, the Commissioner will now go on to consider where the balance of the public interest lies.

Public interest

Arguments in favour of disclosure

22. The public authority acknowledges the general public interest in being transparent and accountable about the way it functions, including the specific information it considers as part of its reviews.
23. There will also be a specific public interest in the surgery in question and disclosure would allow the public authority's decision in relation to the surgery to be scrutinised further.

Arguments in favour of maintaining the exemption

24. There is a strong public interest in avoiding the prejudice outlined in paragraph 19.
25. This prejudice would dilute the efficiency, effectiveness and robustness of the public authority in carrying out its regulatory activities. Considering the public authority protects the public from misconduct, negligence, incompetence, dishonesty or malpractice in health and social care settings, the Commissioner assigns a considerable weight to protecting its processes.

The balance of the public interest

26. The Commissioner has determined that the balance of the public interest lies in maintaining the exemption.
27. The public authority has provided the complainant with as much information, which the Commissioner notes is recorded, publicly available and contextual, about the surgery as it can in order to address the complainant's concerns.
28. However, the Commissioner concurs that the public interest is better served by withholding the remaining information, as identified in paragraph 9.
29. The Commissioner doesn't require any further steps.

Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF