

NHS England email to Clinical Audit Support Centre Ltd

Sent: 16 October 2019

Re: Freedom of Information request (Our Ref: FOI-060334)

Thank you for your clarified Freedom of Information (FOI) request dated 01 October 2019

Your exact request was:-

“I have been asked to clarify my initial FOI request as regards the National Quality Board’s NCAPOP Partners Sub-Group that I believe last sat on 17 September 2019.

I would like further information in relation to:

- 1. Who the members of the group are? And positions of members on the group, e.g. chairman, secretary, treasurer, etc.**
- 2. Any governance documents for the operation of the group, e.g. Terms of Reference, aims and objectives, job descriptions, etc.**
- 3. Minutes of the meetings [I am happy for commercially sensitive information to be removed or blotted out]”**

NHS England holds recorded information in relation to your request.

- 1. *Who the members of the group are? And positions of members on the group, e.g. chairman, secretary, treasurer, etc.***

We consider certain information to be exempt under section 40(2) of the FOIA. Information is exempt under section 40(2) where that information constitutes personal data (other than that of the requester) and one of the conditions set out in section 40(3) is satisfied. Under the FOI Act disclosure of this information would contravene data protection principles.

The Commissioner advises, in her guidance on section 40(2), that personal data:

“...means any information relating to an identified or identifiable living individual.

“Identifiable living individual” means a living individual who can be identified, directly or indirectly, in particular by reference to –

- a. an identifier such as a name, an identification number, location data or an online identifier, or
- b. one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.”

As such NHS England is using Section 40(2) to withhold the names of members of the group and job titles of those members who are not employed by NHS England. NHS England is instead providing a list of represented organisations.

We have therefore gone on to consider whether the release of this personal

information would contravene any of the data protection principles. Principle (a) of the General Data Protection Regulation (GDPR) sets out that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject...”

In order for there to be a lawful basis for disclosure, either the data subject(s) must consent to the disclosure, or there must be a legitimate interest in disclosure.

Consent

Consent was not sought from any group members for their details to be shared in this manner and would not be sought from external organisations to support a Freedom of Information response.

Legitimate interests

As per the ICO, Section 40 (2) of the FOI act is an absolute exemption; unlike qualified exemptions it does not require a public interest test, but it may involve balancing the rights and freedoms of the employees with any legitimate interest in disclosure.

Under the DPA (Data Protection Act) the exercise of balancing the rights and freedoms of the employees against the legitimate interest in disclosure is different to the public interest test that is required for the qualified exemptions listed in section 2(3) FOIA. In the public interest test, there is an assumption in favour of disclosure because the public authority must disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosure. In the case of section 40(2) the interaction with the DPA means the assumption is reversed; a justification is needed for disclosure. In this instance you have not set out a robust justification for release of this information which would result in a breach of the DPA.

In this instance the withheld information does not, in NHS England's opinion, remove from the documents any relevance or comprehension. As such any legitimate interests in disclosure are met by the documents in their presented form.

Accordingly, the disclosure of this information would not be lawful, and therefore is exempt under section 40(2) of the FOIA. Section 40(2) is an absolute exemption and therefore not subject to the public interest test when considering disclosure of information.

Please find below a membership list

These are the organisations which are represented (core membership):

- NHS England and NHS Improvement, Co-chair of National Quality Board (NQB) Partners Sub-group, National Medical Director for Professional Leadership and Clinical Effectiveness
- NHS England and NHS Improvement
- The National Institute for Health and Care Excellence (NICE), Co-chair of NQB Partners Sub-group, Deputy Chief Executive & Director of Health & Social Care
- National Quality Improvement (inc Clinical Audit) Network (N-QI-CAN)
- Care Quality Commission (CQC)

- Health Education England (HEE)
- NHS Digital
- Public Health England (PHE)
- Healthcare Quality Improvement Partnership (HQIP)
- Welsh Government
- Association of Medical Royal Colleges
- Healthwatch
- NHS Providers

Attendance by invitation:

- Audit Providers
2. ***Any governance documents for the operation of the group, e.g. Terms of Reference, aims and objectives, job descriptions, etc.***
 3. ***Minutes of the meetings [I am happy for commercially sensitive information to be removed or blotted out]***

NHS England holds this information.

However, we are withholding this information under Section 22 of the FOI Act, which states that public bodies are not obliged to disclose information that is intended for future publication.

Section 22 is a qualified exemption, and we are required to assess as objectively as possible whether the balance of public interest favours disclosing or withholding the information.

NHS England recognises that there is in general a strong public interest in information being made as freely available as possible. However, releasing information intended for publication ahead of its planned publication date could lead to disruption of the communications plan and put duplicated or inaccurate information within the public domain. This would or is likely to be misleading to those viewing the information.

For these reasons, we believe withholding the information outweighs the public interest in releasing the information. Equally, as this information is to be published soon, we feel that it is best and reasonable to keep to this timeframe rather than disclose earlier where error or duplication may occur. On publication, this information will be freely available on the [NHS England website](#) for you to view.

We hope this information is helpful. However, if you are dissatisfied, you have the right to ask for an internal review. This should be requested in writing within two months of the date of this letter. Your correspondence should be labelled “Internal Review” and should outline your concerns and/or the area(s) you would like the review to consider. Internal Review requests should be sent to:

NHS England
PO Box 16738
REDDITCH
B97 9PT

Email: england.contactus@nhs.net

Please quote the reference number FOI-060334 in any future communications.

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's Office (ICO) can be contacted at:

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

Telephone: 0303 123 1113
Email: casework@ico.org.uk
Website: www.ico.org.uk

Please note there is no charge for making an appeal.

Please be aware that in line with the Information Commissioner's directive on the disclosure of information under the FOI Act, your request will be anonymised and published on our website as part of our disclosure log.

Please do not reply to this email. This message has been sent from a central mailbox. To communicate with NHS England regarding Freedom of Information (FOI) requests, enquiries or complaints we ask these are sent directly to NHS England's customer contact centre. This is to ensure all communications are progressed correctly. Their postal address, telephone number and email details are as follows:- PO Box 16738, Redditch, B97 9PT; 0300 3 11 22 33, england.contactus@nhs.net.

Yours sincerely,

Freedom of Information

Corporate Communications Team
Transformation and Corporate Operations Directorate

NHS England
PO Box 16738
REDDITCH
B97 9PT

Tel: 0300 311 22 33
Email: england.contactus@nhs.net