

4 September 2013

Our ref: F13/5656/EH

By Email to Mrs D Havercroft via What Do They Know website

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Dear Mrs Havercroft,

Information request review

Thank you for your email dated 8 September 2013 seeking an internal review of our response to you under the Freedom of Information Act 2000 (FOIA).

In your original request received 14 August 2013 you asked for:

- a. Whether or not local disciplinary or remedial action was undertaken as a result of the inquiry for any of the individuals concerned (medical directors and other staff)
- b. Whether or not the Trust/SHA raised the issues with the GMC.
- c. Whether or not any individuals who are registered with the GMC were assessed by the National Clinical Assessment Service in the light of "the problem of the quality of the diagnostic service".

My colleague Ms Elizabeth Hiley applied the following exemptions to the information you requested:

- Section 40(5)(b)(i)
- Section 31(3)

I have reviewed Ms Hiley's response to you and I believe that she has correctly applied the exemptions listed above. I have set out my reasons for this below.

Review of Response - Section 40(5)(b)(i)

Any disclosure of information under FOIA is a 'public disclosure'. This means that:

- any member of the public can request the information
- information released under FOIA can then be released to any other person requesting the same information

In order to protect personal information from being released publicly, the FOIA contains certain provisions exempting information that is personal to individuals.

I have reviewed Ms Hiley's response to you and I believe that she has correctly applied Section 40(5)(b)(i) to Items a, b, & c of your request. As you mention in your email dated 8 August 2013, the names of the individuals you are seeking information about are in the public domain:

<http://www.uhbristol.nhs.uk/files/nhs-ubht/Histopathology%20report%20December%202010.pdf>

<http://www.uhbristol.nhs.uk/for-clinicians/our-clinical-services/histopathology/contacts/>

I believe that if we confirmed if any complaints have been made about doctors named in the December 2010 Report for University Hospitals Bristol there is potential that a member of the public could identify the doctors concerned. My view on this is not merely based on the number of doctors identified in the report but also the level of personal data available in the report.

We believe that it is reasonable for doctors to expect that if complaints about them are not referred to a public Fitness to Practice Hearing or did not result in any action being taken on the doctor's registration, whether or not complaints had been made would be kept confidential. If we were to confirm or deny the existence or non-existence of the information you have requested we would breach the first principle of the DPA which requires that the processing of personal data is fair and lawful. We consider that it would be unlawful because the conditions in Schedule 2 of the DPA are not met.

Our position on the use of Section 40(5)(b)(i) is in line with current GMC disclosure policy, current guidance issued by the Information Commissioners Office and recent ICO Decision Notices issued by the ICO for similar requests (First Tier Tribunal decision EA/2013/0014).

Review of Response - Section 31(3)

I have reviewed Ms Hiley's response to you and I believe that she has correctly applied Section 31(3) to Items b and c of your request.

I agree with Ms Hiley that confirming whether or not we hold this information would be likely to have an adverse impact on our fitness to practise function. We believe that doing so would discourage individuals or organisations from raising concerns or cooperating with an investigation, if in the knowledge that information about their communication with us, including whether or not that communication took place, may be made publicly available.

This exemption is subject to a public interest test. I have balanced the arguments above against the arguments in favour of disclosure, namely openness and accountability of NHS services. I also consider it relevant to note paragraph 35 in the recent First Tier Tribunal decision EA/2012/0262:

There was no significant public interest behind her request; the inquiry had been held and published its report. Action was being taken to improve services. The process of making multiple requests for information was not seeking to illuminate the public; rather it was attempting to substitute Ms Havercroft's own views for all normal mechanisms of scrutiny, accountability and management.

My decision is that the public interest in maintaining the exemption and withholding the information requested outweighs the public interest in disclosure.

I appreciate that you may likely be disappointed by my response on this matter. You do have a further right of appeal to the Information Commissioner, the regulator of the DPA and the FOIA. Their contact details are as follows:

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

Tel. no: 0303 123 1113
Email: mail@ico.gsi.gov.uk

Please let me know if you have any questions.

Yours sincerely

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