

Mr Alan Dransfield
By Email to: request-114374-
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**DIRECTORATE OF FINANCE & BUSINESS
DEVELOPMENT**

1st November 2013

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Dear Mr Dransfield

I am writing to you to inform you of the results of the internal review requested by you on 31st March 2013 into your Freedom of Information request dated 23rd May 2012. I have now completed a full independent review of the handling of your request and the substance of the response you received. The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under Section 45 of the Freedom of Information Act which can be found at this link:

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

In conducting my review of the handling of your request I have focused on the following requirements of the Act:

- Section 1(1) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request.
- Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- Section 17(1) which states that, where it claims that information is exempt, the public authority must, within the time for complying with Section 1(1) give the applicant a notice which states the fact, specifies the exemptions in question, states why the exemption applies.

You made your original request on the 23rd April 2012 and this was acknowledged on the same day by the Trust FOI Team. That request did not include a request for fire risk assessments. In email acknowledging your request the FOI team requested further clarification about aspects of your request on 11th May 2012 and 20th May 2012. These were unrelated to the fire aspect of your request. You provided clarification on 23rd May 2012 and this was responded to on 28 May 2012. On 30th May 2012 the FOI team wrote to you noting that your email of 23rd May included a request for fire protection risk assessments and advised you that this amounted to a

fresh request. I have considered your request for fire risk assessments to be a separate request made on 23rd May 2012.

Your request was answered as follows. Charlotte Pritchard confirmed in her reply of 22nd June 2012 that the Trust has approximately 150 fire protection risk assessments in place as risk assessments are required for individual areas within the Trust. She advised that the Trust declined citing the exemption at Section 38 of the Freedom of Information Act 2000, which states that:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to –

- (a) Endanger the physical or mental health of any individual, or*
- (b) Endanger the safety of any individual”.*

She explained that the information you requested concerned the Trust's fire protection measures and so related directly to the safety of the Trust, its patients, staff and visitors. The Information Commissioner's Office (ICO) guidance on the use of this exemption suggests that section 38 may be applied to requests for information the disclosure of which could lead to locations being open to sabotage or other injurious act.

Having considered the issue Charlotte Pritchard advised you that the Trust believed that providing details of the Trust's fire protection risk assessments that you requested would place into the public domain details that could increase the potential vulnerability of the Trust's property to threats or injurious actions. This had the potential to endanger the physical health and safety of any individual on the Trust's property by revealing the risks, plans and procedures the Trust has in case of fire.

The relevant ICO guidance can be viewed at this link:

[http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS GUIDANCE 19 - HEALTH AND SAFETY.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_19_-_HEALTH_AND_SAFETY.ashx))

Section 38 is what is termed a “qualified exemption” under the Freedom of Information Act 2000. This requires a Public Interest Test to be undertaken. A Public Interest Test requires the Trust to weigh the harm that is identified against the wider public interest that could be served by disclosure.

In her reply of 22nd June 2012, Charlotte Pritchard advised you that she had carried out such a Public Interest Test. In doing so the Trust recognised that the release of the information requested could facilitate and promote Trust transparency and would enable the public to have an increased understanding of the Trust by bringing into the public domain information affecting health and safety of the Trust, its patients, staff and visitors. This would have as one consequence an improved understanding by the public of the safety mechanisms in place (and is therefore of benefit to the community). This in turn would generate confidence in the Trust's safety measures to protect its patients, staff and visitors.

Against this however the Trust considered that releasing the information requested had the potential to jeopardise the safety of anyone within the Trust's buildings as the information provides details relating to the fire protection mechanisms in place. If this information were to be placed in the public domain details would therefore be available that could make the Trust vulnerable to external threats including malicious

actions. This in turn has the potential to endanger the safety of patients, staff and visitors in the event of an actual fire or evacuation in the event of a threat.

In conclusion, having considered the arguments for both release and exemption, the Trust reached the decision that in this instance the potential risk posed to patients, staff and visitors by the release of the information you requested is greater than the public interest and benefit that would be served by disclosure of information (as a result of the potential consequences that the release of the information may have), and as such the information is being withheld under section 38 of the Freedom of Information Act.

I turn now to my findings over the handling of your requests. So far as your original request of 23rd April 2012 is concerned, on the 5th June 2012 the FOI Team replied to your original request and answered all your original requests for information in that document. The Freedom of Information Act 2000 requires that any such request must be responded to within 20 working days, but that a public authority is not obliged to comply with a request if it reasonably requires further information before it can identify and locate the information requested; and it has asked the applicant for this further information. In such a case, the authority (in this case the Trust) does not need to comply until or unless it has received a response which sufficiently clarifies the request. As the clarification you provided in connection with original request was received on 23rd May 2012 and the response passed to you on 5th June 2012, I find that the Trust complied with its obligations to you under the terms of the Act in respect of your original request of 23rd April 2012. I further find that your request for fire assessments was first made on 23rd May 2012 and was a fresh request.

I turn now to your supplementary request contained within your clarification of 23rd May 2012. Charlotte Pritchard replied to you on 22nd June 2012, which is within the 20 working day deadline set by Section 10(1) of the Freedom of Information Act 2000. Section 17(1) of the same Act requires the Trust to provide the applicant with a notice which states the fact that the Trust believes the information is exempt, specifies the exemptions on which the Trust wishes to rely and states why the exemption applies, together with any relevant public interest test. I find that the reply by Charlotte Pritchard of 22nd June 2012 as summarised above addresses these issues as required by the Act, and did so within the relevant time limit.

I have also reconsidered the grounds on which your request was declined. I have examined the fire risk assessments, and I find that disclosing the fire risk assessments could result in an increased risk or threat to the Trust, its patients, visitors and staff in the event of malicious action following a fire, and that the balance of the public interest in disclosure is outweighed by the need to ensure the continuing safety and security of the Trust, its patients visitors and staff in the event of fire and against the possibility of malicious or criminal activity. Accordingly, I uphold the original decision to withhold the information requested as exempt information under Section 38 of the Freedom of Information Act 2000.

I hope this makes the Trust's position clear. You have the right to appeal to the Information Commissioner against the decision to withhold the information concerned. Should you wish to do so you should write to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire
SK9 5AF

Telephone: 0303 123 1113 or 01625 545745
Fax: 01625 524510

Email: casework@ico.org.uk.

Kind regards

(signed)

David Taylor

Information Governance Manager