

02 March 2017

Wellington House
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London SE1 8UG

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E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

By email

Dear [REDACTED]

Request under the Freedom of Information Act 2000 (the "FOI Act")

I refer to your email of **2 February 2017** in which you requested information under the FOI Act from NHS Improvement.

Your request

You made the following request:

"I would be grateful if you could release the results of a survey on leadership and culture that was conducted by yourselves for the Royal Manchester Children's Hospital which is part of the publicly funded Central Manchester Foundation Trust. The survey was concluded on the 14th December 2016 and had 101 responses on the survey monkey system. I am happy for you to release the results to me via email."

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold this information on the basis of the applicability of the exemptions in sections 40 and 41 of the FOI Act, as explained in detail below.

Section 41 – information provided in confidence

The information has been withheld under section 41 of the FOI Act on the basis that it was obtained by NHS Improvement from a third party, disclosure of which would give rise to an actionable breach of confidence.

Staff at the Royal Manchester Children's Hospital would have had a reasonable expectation that the information they provided in response to the RCMH's leadership and culture survey, in its raw form, would remain private.

In addition, Central Manchester NHS Foundation Trust, which includes Royal Manchester Children's Hospital, would also have a reasonable expectation that the results of the staff survey, in their raw form, would be kept confidential by NHS Improvement and used only for the specific purposes of the pilot scheme under Cultural Leadership Programme.

Section 41 is an absolute exemption and does not require the application of the public interest test under section 2(2) of the FOI Act. However, in considering whether a confidence should be upheld, a court will have regard to whether the public interest lies in favour of disclosure. In my view there is a strong public interest in respecting the duty of confidence owed to individual respondents and to the commissioning trust in this case.

Section 40 – personal information

Under section 40 of the FOI Act, information is protected from disclosure if it is personal data protected under the Data Protection Act 1998 ("the DPA"). Section 40(7) of the FOI Act provides that the relevant definition of personal data is that set out at section 1(1) of the DPA:

"personal data" means 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 intentions of the data controller or any other person in respect of the individual.

Under section 2 of the DPA, "sensitive personal data" includes personal data consisting of information as to the racial or ethnic origin of the data subject, his political opinions, his religious beliefs or other beliefs of a similar nature, whether he is a member of a trade union (within the meaning of the M1Trade Union and Labour Relations (Consolidation) Act 1992), his physical or mental health or condition, his sexual life and the physical or mental health or condition of the data subject.

Some of the information requested is being withheld from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data and the first and/or second condition under section 40(3)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) and/or is likely to cause damage or distress, which would be unwarranted. The information requested contains personal details of staff who participated in the survey who would have a reasonable expectation that their information would be withheld.

In addition, some of the information within the scope of the request relates to the physical condition of staff, their sexual orientation and religious beliefs and is therefore sensitive personal data under section 2 of the DPA and the first and/or second condition under section 40(3)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) and/or is likely to cause damage or distress, which would be unwarranted. The staff who responded to the survey would have a reasonable expectation that their information would be withheld.

Section 40 is an absolute exemption and consideration of the public interest in disclosure is not required.

Review rights

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement's staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to nhsi.foi@nhs.net.

Publication

Please note that this letter will shortly be published on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,



Jo Vigor

Senior Development Advisor

