

28 July 2016

By email: [REDACTED]

Dear [REDACTED]

### **Request under the Freedom of Information Act 2000 (the 'FOI Act')**

I refer to your email of 23 June 2016 in which you requested an internal review of our response of 21 June to your request of 23 May 2016 under the Freedom of Information Act ("the FOI Act"). Please note that this response is sent on behalf of the NHS Trust Development Authority ("TDA") and any references to NHS Improvement mean the TDA.

#### **Your request**

You made the following request:

*"I would like to request using the Freedom of Information act, any communications between Richard Harris, as chairman, or former chairman, of Royal Wolverhampton Hospitals and Sir Peter Carr whilst he was chairman of the NHS Trust Development Authority.*

*I am particularly interested in any items regarding governance of the Royal Wolverhampton Hospitals trust."*

#### **Decision**

I have reviewed the original decision in light of the grounds you put forward in your internal review request. I have decided to uphold the original decision for the reasons already provided i.e. the exemption for personal data under section 40 of the FOI Act as explained in the letter of 21 June 2016 and, in addition, on the basis of the exemption contained in section 41 of the FOI Act as explained in detail below.

#### **Section 41 – information provided in confidence**

Some of the information that you have requested was confidentially provided to NHS Improvement by the Trust. Section 41(1) provides that information is exempt information if:

- a) it was obtained by the public authority from any other person (including another public authority) and

- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The test in section 41(1)(a) is met as some of the information was obtained by NHS Improvement from a third party i.e. the correspondence that was sent to NHS Improvement by the Trust chair.

The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. For a breach of confidence to be actionable:

- (i) the information must have the necessary quality of confidence about it;
- (ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) the disclosure of the information must amount to an unauthorised use of the information to the detriment of the confider.

Compliance with NHS Improvement's regulatory processes by the Trust and other trusts is crucial to our work. The reasonable expectation of trusts in providing confidential information is that it will remain private and will be used by NHS Improvement for the specific and limited purpose of regulating trusts. The information is not trivial and not readily available by other means and was imparted in circumstances which created an obligation of confidence. I consider that disclosure of the Trust's correspondence to us would reveal sensitive information which would amount to an actionable breach of confidence. A breach of confidence will be actionable if a legal person is able to bring an action for the breach of confidence to court and the action is likely to succeed.

#### *Public interest test*

Section 41 is an absolute exemption and the application of the public interest test pursuant to section 2(2) of the FOI Act is not required. However, in considering whether, in an action for breach of confidence, a confidence should be upheld, a court will have regard to whether the public interest nevertheless lies in favour of disclosure.

You expressed a particular interest in the governance of the Trust. There is already information in the public domain regarding the current state of governance at the Trust and I do not consider that disclosure of the information will greatly enhance the public's understanding of the issues. There are also various governance reviews underway and, in due course, NHS Improvement will publish appropriate details about those reviews. Publication at the appropriate time, i.e. after conclusion of the reviews, will be sufficient to meet the public interest in my view. The general public interest in fostering accountability and transparency in the affairs of this Trust has been weighed against the strong public interest in favour of maintaining confidential information. At the present time, I do not consider that there is a strong public interest in the information which would justify overriding the duty of confidence owed to the Trust.

## **Review rights**

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 can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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,

**Janice Scanlan**

Head of Non-executive Development