

Freedom of Information Request

Reference Number: [EPUT.FOI.18.898 \(Review\)](#)

Date Received: [17 January 2019](#)

Information Requested:

I would like to appeal this decision. My reasons are that I am considering whether to contact the ICO surrounding sensitive data breaches that these two employees have made, during the course of an investigation which they conducted. I understand that the data breaches within their report are being investigated by the Trust. The data relates to my husband and I am absolutely appalled that the investigation manager, HR support and the commissioning manager (two of whom are senior registered nurses) have all failed to prevent my husband's sensitive health information being given to his colleague, despite him clearly identifying that he wanted it to remain confidential.

Should his case end up at an employment tribunal then I trust that information about the investigation teams experience and training will be given to the tribunal panel as we have grave concerns surrounding the quality of their investigation and my husband has been able to identify that one of the review letters within the pack they have provided has been written retrospectively as it contradicts other correspondence.

I hope that you can reconsider my request but appreciate that you would need to ask the employees consent to provide me with this information.

Response:

The Trust has reviewed this request. Both staff members have now confirmed they provide their consent for the response for Question 1 and Question 2 to be released into the public domain. However Question 3 is exempt under Section 40 (Personal Information) of the Freedom of Information Act as consent has not been provide and as per Legal advice.

1. How many Disciplinary (Conduct) Investigations has Staff 1 undertaken?
3
 2. How many Disciplinary (Conduct) Investigations has Staff 2 undertaken or provided HR support with?
18
 3. Have Staff 1 and Staff 2 had any formal training on conducting disciplinary investigations? If so what was the training called and when did it take place?
[The Trust is unable to provide this information. This is because the Trust considers qualifications and training of named individuals to be the personal information of those individuals which is exempt under Section 40 \(Personal Information\) of the Act.](#)
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Applied Exemption:

Section 40: Personal information

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5) The duty to confirm or deny—
 - (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either—
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section— “the data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
 - “personal data” has the same meaning as in section 1(1) of that Act.