

Freedom of Information Request

Reference Number: EPUT.FOI.23.3275
Date Received: 10th December 2023

Information Requested:

<https://www.voice-online.co.uk/news/uk-news/2023/01/03/mental-health-trust-failed-to-disclose-emails-about-dead-teen/>

1) What were the reasons for failing to disclose the emails?

"Should Local Authorities have a procedure in place detailing how messages can be searched for by their IT Department and retrieved for possible disclosure when included within the scope of a requestor's Subject Access Request?

We would expect that they would have an internal policy for searching for messages."
[Attached email dated 29.11.23 from ICO]

The Inquest was informed in a statement from the Director of Community Delivery and Partnerships for South East Essex that the external company who conducted the independent investigation into the patient's care and treatment was not provided with any emails other than those embedded within the patient's clinical record.

EPUT clinicians were instructed through a policy entitled "Records Management Policy" that "... documents must be inputted into the electronics system as soon as possible to be saved ..." and further at 5.4.14 "... records include correspondence from the patient / service user or other parties". Whilst arguably this includes emails it was noted to not be sufficiently clear to clinicians.

The external company should have been provided with full access to the emails in this case and an apology was provided to both the court and to the family for the inconvenience, upset and delay that this omission caused.

Regarding the above documentation, we would like to inform you that we are considered not to be a local authority. The website link you provided above is relating to an inquest, not a subject access request as mention in the ICO documentation. It is important to note that the process for an inquest differs significantly from that for a subject access request.

2) Please provide your internal policy in relation to email correspondence searches.

As per your previous email, we have focused this response on emails correspondences. Your reference to ICO documentation relates to Whatsapp messages in relation to a subject access request.

The Email system within Essex Partnership University Trust is managed as part of the national NHS mail service, the controls for email searches are under the authority of NHS England.

The Trust believes that NHS England guidance and policy is publicly available on the <https://support.nhs.net/knowledge-base/forensic-discovery-requests/> & <https://support.nhs.net/knowledge-base/nhsmail-access-to-data-procedure/> website and therefore is applying a Section 21 exemption of the Act (Information accessible to applicant by other means):

Further information is publicly available on the <https://digital.nhs.uk/services/nhsmail/nhsmail-policies> website and therefore is applying a Section 21 exemption of the Act (Information accessible to applicant by other means):

Section 21: Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Publication Scheme:

As part of the Freedom of Information Act all public organisations are required to proactively publish certain classes of information on a Publication Scheme. A publication scheme is a guide to the information that is held by the organisation. EPUT's Publication Scheme is located on its Website at the following link <https://eput.nhs.uk>