

Freedom of Information Request

Reference Number: EPUT.FOI.23.3011
Date Received: 9th of June 2023

Information Requested:

1. A copy of the report showing the findings of internal inquiry into issued raised in a Dispatches programme aired in October 2022.

Please see below

2. A report relating to the Mental Health Activity Deep Dive that was received and noted by the quality committee in May (please also find attached where this report is referenced in the latest board report).

The Trust can confirm that we do hold the information requested. However, we consider the information to be exempt from disclosure, in accordance with the provisions of FOIA.

The information is being withheld on the following basis:

- (i) Disclosure would prejudice the effective conduct of public affairs (sections 36(b)(i), 36(b)(ii) and 36(c) FOIA);
- (ii) The information is 'personal data' (section 40(2) FOIA); and
- (iii) Disclosure would be likely to prejudice the health of any person (section 38 FOIA).

The Trust sets out further detail in relation to the exemptions we have applied below.

Effective conduct of public affairs (sections 36(b)(i), 36(b)(ii) and 36(c) FOIA)

Disclosure of certain information would [be likely to] prejudice:

- the free and frank provision of advice; and/or
- the free and frank exchange of views for the purposes of deliberation; and/or
- the effective conduct of public affairs by the Trust.

It is the view of Paul Scott, the Trust's chief executive and 'qualified person' under FOIA that the above effects would [be likely to] occur because:

- (a) The inquiry and deep dive were undertaken following concerns around the care and safety of mental health patients. Both processes rely on voluntary provision of information by Trust staff, upon which the reports are based. Those participating in the processes are told their contributions are confidential. If Trust staff were not

able to provide evidence or views or otherwise speak to the review teams in confidence, and with confidence that that would be respected, they may be less forthcoming with concerns. In turn, this would make the conclusions of the reports (which is advice given to the Trust) less comprehensive or reliable, thereby prejudicing the free and frank provision of advice in other similar cases in the future.

(b) It is important that the Trust has a 'safe space' to consider and take action as a result of the findings of the inquiry and deep dive. Some work arising from these remains ongoing. Disclosing details of the findings will prejudice that work, and thereby prejudice the free and frank exchange of views for the purposes of deliberation.

(c) The delivery of clinical services is an aspect of the 'conduct of public affairs' by the Trust. The unmediated disclosure of the reports would be likely to jeopardise the progress that has been made so far, undermining workforce morale and sustainability. In this way, disclosure would be prejudicial to the effective conduct of public affairs.

Accordingly, this information is exempt under ss. 36(b)(i) and (ii) and (c) FOIA.

Personal information (section 40(2) FOIA)

Some information in both reports relates to particular patients, members of staff or other individuals involved in the reviews, and we have determined that it would not be fair to disclose this information under FOIA. This assessment has been made on the basis of the content of the information, and also the context in which the information was provided. The review processes are designed to be undertaken on a confidential basis, and staff provided information with an expectation of privacy and anonymity. Given this, it would not be in the reasonable expectations of those that contributed to the reports to have their information disclosed under FOIA.

Prejudice to health (section 38 FOIA)

This exemption applies to certain information, which if disclosed to the public could be misinterpreted and deter people from seeking treatment for their health conditions and accordingly would be likely to prejudice their health.

Public interest test

Sections 36 and 38 FOIA are 'qualified exemptions' which means that as part of their application, the Trust has considered whether the public interest in disclosure of the information covered by the exemption outweighs the public interest in maintaining it.

The public interest factors in favour of disclosure include:

- The inherent public interest in favour of transparency in how public organisations like the Trust operate, and in informed public debate about NHS services, reflected in the general right to information in FOIA.

- Openness leads to greater accountability, demonstrates that the Trust has a grip and introspection on the issues in play, and therefore potentially leads to improved trust and confidence in public bodies.
- The possibility that ‘shining a light’ on areas where there are difficulties in service delivery may in fact help to improve those issues.

The public interest factors against disclosure include:

- The strong public interest in maintaining effective routes to give and take feedback about where there are problems and how NHS services can be improved, and the public interest in maintaining an effective mechanism for feedback to be given in confidence in this case and in future cases.
- Disclosure could potentially damage the relationship between the Trust and its employees, if it makes it harder for those individuals to be open with the Trust in a ‘safe space’.
- The public interest in the Trust being able to learn from and take action from reports. The nature of the services covered by the report are highly specialised, and ensuring there is stability and efficacy in these processes, including in supporting the strengthening of professional relationships within our workforce, helps to ensure those services are effective and sustainable for other patients in the future, as well as our staff.
- Some of the issues raised by the reviews, if disclosed to the public and misinterpreted, could lead to a loss of trust and confidence in the Trust and deter individuals from seeking the specialist medical help they need.

Additionally, the reports have been produced relatively recently and the Trust is still working to resolve some of the issues raised within them. There are also other ways in which many of the public interest factors in favour of disclosure can be met which do not rely on the disclosure of the reports, including:

- 1) the Trust’s complaints processes and other mechanisms through which concerns about services can be looked at;
- 2) CQC inspection and NHS ‘commissioning’/oversight and governance processes through which potential problems in service delivery can be assessed and managed;
- 3) the Trust’s own systems of assurance, including board committees chaired by independent NEDs; and
- 4) public board meetings in which the deep dive is discussed and summarised.

In light of all the factors, the Trust has concluded the balance of the public interest favours non-disclosure of the withheld information at this time.

Your rights to an internal review and to complain to the ICO

If you are dissatisfied with our response to your request, you can ask us to undertake an internal review. You can do this by contacting the FOI team via email to request a review: epunft.foi@nhs.net .

If you remain dissatisfied with our response following the internal review, you can complain to the Information Commissioner's Office (ICO). You can find out more about how to do this by visiting <https://ico.org.uk/make-a-complaint/foi-and-eir-complaints/foi-and-eir-complaints/> . However, we should point out that under section 50 of the Freedom of Information Act, you are obliged to exhaust the Trust's internal review process before appealing to the ICO.

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>