

Human Tissue Authority

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Date: 19 January 2024

By email to: [REDACTED]

Dear [REDACTED]

Freedom of Information request

Thank you for your Freedom of Information request, which was received by the Human Tissue Authority (HTA) on Tuesday 19 December 2023. Your letter outlined the following request:

“We would be grateful if you would provide us with disclosure relating to the investigation including but not exclusively the following:-

- Any investigation report into our client’s complaint
- Any documentation relating to the investigation’s outcome, including HTA requirements of St George’s University of London as a result of the investigation
- All correspondence relating to our client’s complaints, and with regard to the investigation, with St George’s University of London

We would be grateful for the disclosure of all relevant documentation relating to our client’s complaints, including copies of correspondence with him and other parties, of statements of witnesses, and of minutes of meeting relating to our client’s complaints and the investigation”.

Response

In response to the first and second parts of your request, there was no investigation culminating in a report.

In response to the third part of your request and associated clarification, the HTA reviewed all correspondence and associated documentation that could fall within the

scope of the request. No information was considered suitable for release into the public domain.

In making decisions on this matter, we have taken into account applicable exemptions provided under specific sections of the Freedom of Information Act 2000: namely, section 31(1)(g) [leading to section 31(2)(c)] and section 41.

Information has been withheld under section 31(1)(g) leading to section 31(2)(c) of the Freedom of Information Act 2000, which provides an exemption for disclosure of information if its disclosure would or would be likely to prejudice 'the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist, or may arise'. This is a 'qualified' exemption, meaning that, even where the exemption applies, we can rely on it only if the public interest in applying the exemption outweighs the public interest in disclosure.

The Human Tissue Act 2004 (HT Act) provides the HTA with a range of functions in respect of superintending compliance with the HT Act and ensuring HTA-licensed establishments are operating within the requirements of the HT Act. Where concerns that relate to matters within our remit are raised with us, it is important that we are able to evaluate these sensitively and confidentially.

In considering the public interest test, we acknowledge that there may be a public interest in understanding concerns that have been raised to the HTA about the compliance with the Human Tissue Act 2004 of particular named institutions, and that there is a public interest in our activities relating to our remit as a regulator. We also appreciate there is a public interest in the HTA maintaining openness and transparency generally.

On the other hand, there is a strong public interest in ensuring that the HTA's regulatory functions are carried out without being prejudiced. We are of the opinion there is a real and significant risk that the prejudice of our regulatory functions would occur if the requested information was released. When evaluating allegations, we need to formulate our requests carefully and for information to be provided in an adequate level of detail. The appropriate seeking and provision of detailed information is an essential part of this process. We have genuine concerns that this disclosure of such exchanges would make organisations less likely to provide detailed information for fear that it will end up in the public domain. Less detailed information would likely inhibit our ability to make evaluations based on full possession of the facts.

Although our position is focussed more on the extent that disclosing the information will have on future regulatory activity, we are also of the view that it would be unfair on organisations subject to allegations to have a level of detail disclosed in the public domain that is not normally disclosed.

We also believe we are more likely to obtain higher quality information where there is cooperation between the parties, especially where allegations are made and may be sensitive in nature, including having the potential to cause distress that would not ordinarily have arisen.

On balance, therefore, we have concluded that disclosure of information described in your request would pose a realistic risk that it would prejudice our ability to ascertain “whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise”, and that the exemption at section 31(1)(g) applies.

We have also withheld information under section 41 of the Freedom of Information Act 2000, which provides an exemption for information which was provided to the HTA in confidence and which, if it were disclosed, would constitute an actionable breach of confidence. The information withheld in this case constitutes information which was provided to the HTA by third parties in circumstances placing a duty of confidentiality on the HTA; in our view, it would constitute a breach of that duty if the HTA were to disclose it and there is no overriding public interest sufficient to displace that duty. The section 40 exemption is absolute and therefore not subject to a public interest test.

Further information

If you are unhappy with the way the HTA has handled your request for information in this case, you may in the first instance ask us for an internal review by writing to us at the above postal or email address.

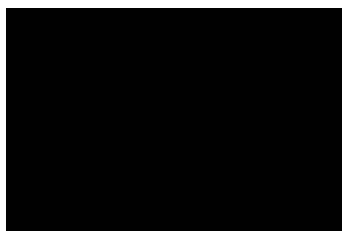
If you remain dissatisfied with the handling of your request, you have the right to appeal directly to the Information Commissioner for a decision, at the address below. There is no charge for making an appeal.

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Telephone: 08456 30 60 60 or 01625 54 57 45

Website: www.ico.org.uk

Yours sincerely

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