

Human Tissue Authority
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Date 18 November 2016

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By email to: [REDACTED]

Dear [REDACTED]

Freedom of Information request

I am writing to you regarding an e-mail you sent to a colleague of mine, [REDACTED] [REDACTED] on 25 October, in which you requested assistance in obtaining a copy of an investigation report from [REDACTED].

[REDACTED] reported the incident that you are seeking information about to the HTA in July of 2015. The HTA subsequently received a copy of the incident report in September 2015.

As [REDACTED] set out to you in [REDACTED] email of 25 October, the HTA is treating your request for assistance as a Freedom of Information (FOIA) request under the 2000 Act.

Response

A decision has been made not to disclose the report submitted by [REDACTED] and the detailed reasons are provided below.

We recognise that this may be upsetting for the family. However, as a regulator, we must be mindful of the wider public interest. We are of the view that releasing

reports submitted to us may lead to less detailed and open reporting, which in turn limits our ability to work with establishments to get to root causes and to ensure such incidents do not reoccur. Should the family wish to know more about the HTA and our role, please pass on the number of our [REDACTED] [REDACTED] who would be pleased to answer any questions.

Section 31 exemptions

Section 31(1)(g) of the FOIA provides an exemption for, “the exercise by any public authority of its functions for any of certain specified purposes”. Those specified purposes include the purpose of, “ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise”.

The HTA’s ongoing position is that to disclose information submitted to us as part of investigations would have an adverse impact on the likelihood of incidents being reported to us and on the quality of any submitted documentation. Furthermore, to release such reports would be likely to result in those that submit reports providing us with more guarded information, as they might fear adverse publicity, which could in turn become a risk to public safety.

Our assessment is that by deterring the submission of detailed reports and frank information, because of the prospect of disclosure, we would clearly prejudice our supervisory functions, and would make it more difficult for us to establish whether formal regulatory action is required in specific cases.

While [REDACTED] was not required to provide the report to the HTA, we are of the view that the learning from voluntary reports is equally as valuable as those mandated by legislation. We therefore wish to encourage such detailed, voluntary reporting. We are satisfied that to release the [REDACTED] investigation report would prejudice our ability to exercise our regulatory functions. We will therefore apply the exemption set out in section 31(1)(g) of the FOIA.

Public interest test

Section 31(1)(g) of the FOIA is a conditional or qualified exemption. This means that even where it is considered to apply, it may be relied on only if the public interest in applying the exemption outweighs the public interest in disclosure.

We acknowledge that there is a significant public interest in accessing information about incidents. We also appreciate there is a public interest in openness and transparency generally.

There are a number of reasons why it would be contrary to the public interest for the substance of reports to be disclosed. There is a very strong public interest in ensuring that information on incidents is reported, so that they can be investigated and corrective and preventative actions put into place. These could be actions taken by a licensed establishment or actions taken by us.

As indicated above, the prospect of publication is likely to have an adverse effect on the quality of future reporting and create a real risk that this would have an adverse impact on our ability to scrutinise reported incidents, and our ability to identify cases where regulatory action can be taken and is required. This in turn would jeopardise our regulatory function to protect and uphold patient safety and public confidence in the sectors that we regulate.

Furthermore, we rely on the submission of full and frank reports to enable us to identify trends or sector-specific risks in order to issue alerts or guidance. The provision of frank and suitably detailed reports makes a very important contribution to our ability to raise standards and take appropriate action to prevent similar incidents from happening elsewhere. In order to carry out this work, we need access to detailed information about incidents and the circumstances which lead to them. It is clearly in the public interest that establishments should not be inhibited from supplying us with information at the necessary level of detail.

In view of the very considerable public interest in ensuring that incident information is reported in order for us to discharge our statutory and regulatory functions and promote safe practice, we have concluded that the public interest test in this case favours the application of the section 31(1)(g) exemption with regard to the disclosure of [REDACTED] report. We do not believe that the public interest is served by providing a copy of the report, which may jeopardise the effectiveness of our ability to respond to reported incident information. This would in turn reduce the effectiveness of our regulatory activity and our ability to protect patient safety.

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 or complaint, 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: 0845 630 6060 or 0162 554 5745

Website: www.ico.gov.uk

Yours sincerely,

