

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2023

Public Authority: University Hospitals of Derby and Burton NHS Foundation Trust

Address: Uttoxeter Road
Derby DE22 3NE

Decision (including any steps ordered)

1. The complainant has requested review documents associated with Mr Daniel Hay, which University Hospitals of Derby and Burton NHS Foundation Trust ('the Trust') has withheld under section 31(1)(c) of FOIA. The Trust considers that disclosing the information would be likely to prejudice the administration of justice.
2. The Commissioner's decision is that the Trust is entitled to withhold the requested information under the exemption it's cited and the public interest favours maintaining the exemption.
3. It's not necessary for the Trust to take any corrective steps.

Request and response

4. Mr Daniel Hay was a Gynaecology and Obstetrics Consultant who worked at Royal Derby Hospital. Concerns about Mr Hay were known and had been in the public domain since at least 2021. In September 2022 the Trust confirmed that it had undertaken and concluded an independent review into the care Mr Hay provided.

5. The complainant made the following information request to the Trust on 4 April 2023:

"1. Please could the trust provide me with a copy of the final report of the NHS England Obstetrics and Gynaecology Review concerning Dr Daniel (Perry) Hay? It was previously referred to as a "joint investigative review" into "Mr DPH" between NHS England Midlands, University Hospitals of Derby and Burton UHDB, NHS Derby and Derbyshire Clinical Commissioning Group

2. Please could the trust provide me with a copy of the final report of the parallel governance review concerning the trust and Dr Daniel (Perry) Hay?"

6. The Trust's final position was to withhold all the requested information under section 31(1)(c) of FOIA.

Reasons for decision

7. The complainant disputes the Trust's application of section 31 to the information they've requested, and in particular, to the governance review. They consider that the governance review concerns the Trust's own governance, and not a criminal investigation into a former employee.
8. This reasoning covers the Trust's application of section 31(1)(c) to the complainant's request.
9. Under section 31(1)(c) of FOIA, information is exempt if its disclosure would or would be likely to prejudice the administration of justice. Section 31 is subject to the public interest test.
10. The Trust sent the withheld information to the Commissioner, and he's reviewed it. The Panel Review clearly concerns Mr Hay, and the Governance Report also concerns Mr Hay; it discusses governance matters at the Trust in the context of the concerns about Mr Hay.
11. The Commissioner is aware that Derbyshire Police has launched a criminal investigation into medical procedures Mr Hay conducted.
12. In its submission to the Commissioner, the Trust said that it had consulted with Derbyshire Police about the matter, who themselves had consulted the Crown Prosecution Service (CPS). The Trust sent the Commissioner an example of one such piece of correspondence from 8 February 2023. In that email Derbyshire Police advise that the CPS's view is that the reports shouldn't be published at this stage, to avoid the

risk of prejudicing any potential future criminal proceedings. The Trust confirmed that the situation remains the same at the date of this decision notice.

13. First, the Commissioner is satisfied that the harm the Trust envisions relates to the applicable interest within section 31(1)(c) ie the administration of justice which includes criminal proceedings.
14. Second, the Commissioner accepts that disclosing internal reviews into the care provided by Mr Hay and associated governance matters would or would be likely to have a detrimental impact on any future criminal investigation into Mr Hay.
15. Finally, the Trust has not discussed how likely it is that the prejudice it envisions will happen – whether it considers that the envisioned prejudice would happen or would be likely to happen. In the absence of any reasoning for the prejudice being more likely to happen than not, the Commissioner will accept that the envisioned prejudice would be likely to happen ie that there is a real and significant risk of the prejudice occurring.
16. The Commissioner is satisfied that all the requested information engages the section 31(1)(c) exemption, and he has gone on to consider the associated public interest arguments.
17. Given the gravity of the concerns about Mr Hay, the Commissioner acknowledges that there is a strong public interest in the reviews that the Trust carried out.
18. However, he agrees with the Trust that disclosing the information would be likely to jeopardise a live investigation by Derbyshire Police or any future civil proceedings. The Commissioner considers that there is a stronger public interest in ensuring that when a potential offence is alleged, it is appropriately, fairly and efficiently investigated. The public interest in this case will be addressed through the outcome of any criminal or civil proceedings.

Right of appeal

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF