

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2024

Public Authority: Bradford Teaching Hospitals NHS Foundation Trust

Address: Bradford Royal Infirmary
Duckworth Lane
Bradford
BD9 6RJ

Decision (including any steps ordered)

1. The complainant has requested information on the findings of an independent review into operational concerns and the conduct of Trust Board members. Bradford Teaching Hospitals NHS Foundation Trust ('the Trust') relied on section 31(1)(g) of FOIA (law enforcement) and section 40(2) of FOIA (third party personal information) to withhold the requested information.
2. The Commissioner's decision is that the Trust was entitled to rely on section 31(1)(g) of FOIA to withhold the independent review report. However, he finds that while section 31(1)(g) is engaged, the public interest favours disclosing some of the information caught by this exemption.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - disclose the contents of part one and part two of the 'Recommendations' section outlined in the report.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 April 2024, the complainant wrote to the Trust and requested information in the following terms:

“Under the FOIA, please could you provide the full independent review commissioned by the trust board into the allegations made by former chair Max McLean, and the conduct of both Dr McLean and trust CEO Mel Pickup. To be clear, I am not looking for the ‘executive summary’ which has been shared internally. I’m looking for the full findings of the review, upon which the summary is based.”

6. The Trust responded in May 2024. It stated that it held the requested report but it was relying on sections 31 and 40 of FOIA to withhold it.
7. Following an internal review, the Trust wrote to the complainant on 17 May 2024. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 7 June 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the Trust was entitled to rely on sections 31 and 40 of FOIA to withhold the requested information.

Reasons for decision

Section 31- Law enforcement

10. Section 31 of FOIA states:

“(1) information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(2) The purposes referred to in subsection (1)(g) to (i) are

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,[...]

- (i) the purpose of securing the health, safety and welfare of persons at work, and
- j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”
11. The Trust has explained that, as part of its statutory function to provide NHS services to the public, it is obliged to ensure that the services are provided, and the Trust is operated and managed, effectively, efficiently and safely.
 12. The Trust stated that it is responsible for investigating issues regarding the quality of care arising out of the actions of its Board and that good governance has an impact on the quality of care. The Trust has a duty to protect the health and safety of patients against risks arising out of or in connection with the services it provides.
 13. The Trust explained it has a legal duty to undertake this function under the National Health Service Act 2006 and the Health and Social Care Act 2012. In particular, the Trust highlighted its obligations under section 81 of the Health and Social Care Act 2012 which concerns NHS provider licenses and governance requirements.
 14. The NHS Provider Licence sets out the requirement for effective management of the Trust and covers the functions of and expectations of the Trust's Board. The Trust considers therefore, that it's part of the Trust's statutory function to ensure that patients, the Trust and the Trust's personnel are protected against risks which arise out of or in connection with the actions of the Trust's staff, especially the Board.
 15. The requested information in this case comprises an investigation report that was carried out by an independent body. The Trust has explained that the purpose of the independent review was to investigate concerns that had been raised relating to the conduct of two individuals, who were members of the Trust's board.
 16. The Commissioner notes that the complainant has made reference to an executive summary of the report being shared within the Trust. The Trust has confirmed to the Commissioner that the executive summary versions of the report were only shared with the Charman and Chief Executive of the Trust, with the non-executive directors and the executive directors. The Trust confirmed that the executive summary versions were also classed as confidential and were not shared any further within the Trust.

17. The Trust considers that disclosure of the information would be likely to prejudice the functions described above. It explained that the report consists of frank assessments about the performance and conduct of individuals within the Trust, as well as other related matters. The report contains evidence from candid interviews with a number of other members of staff, alongside the two individuals who are the subject of the report.
18. The Trust considers that disclosing the requested information would be likely to prejudice such investigations as it would deter prompt, open discussion of any issues that arise and the expression of views on what has contributed to those issues. The Trust explained that, where the report refers to information or statements provided by staff, individuals may be reluctant to engage in a similar investigation in the future, or be as open and honest in that review, if they knew that the information they provided would be disclosed to the public. The Trust considers that this is particularly true as a number of individuals are specifically named within the document.
19. The Trust has stated that, in order to ensure that health services are provided efficiently and effectively, it needs to be able to carry out in-depth and accurate investigations into the behaviour of its Board. Where concerns are raised about the Trust's personnel, and most significantly the Board members, then the risk to both staff and patients is elevated. In such circumstances, the Trust explained that it must be able to rely on free and frank interviews to ensure that accurate and reliable information is easily obtained.
20. In terms of likelihood, the Trust considers that if individuals are not forthcoming with the necessary information it would be likely to directly prejudice the Trust's ability to carry out the meaningful investigations necessary to ensure that services are provided, and the Trust is managed, effectively, efficiently and safely. Therefore, the disclosure of the report would be likely to prejudice the exercise by the Trust of its functions.
21. The Commissioner has considered the information that is being withheld and the Trust's arguments. He agrees that disclosure would be likely to result in the prejudice described above, and so he is satisfied section 31(1)(g) is engaged at the lower threshold of prejudice.
22. As section 31 of FOIA is a qualified exemption, the Commissioner will now go on to consider where the balance of the public interest lies.

Public interest test

Factors in favour of disclosing the requested information

23. The Trust has acknowledged that there is public interest in transparency, accountability and in promoting public confidence in the NHS and those who work within it.
24. In their request for internal review, the complainant has argued that disclosure of the requested report is in the public interest as the concerns raised publicly about the Trust's leadership resulted in regulatory scrutiny.

Factors in favour of maintaining the exemption

25. The Trust has explained that it is best able to conduct a robust investigation into concerns if those involved in the investigation can be assured that the detail will not be published. Publication is likely to deter individuals from participating. It considers that this is especially true given the medical community is a close-knit one.
26. The Trust has also explained that details about the investigation and its outcome are already in the public domain, which goes some way to understanding the context of the concerns and the outcome of the investigation.

Balance of the public interest

27. The Commissioner acknowledges that there is a public interest in promoting transparency, accountability and public confidence in the NHS.
28. He also acknowledges that there is public interest in knowing that concerns that have been raised about an NHS Trust and the conduct of its Board members are investigated and addressed thoroughly, particularly when the concerns have been published in a public manner like an open letter.
29. However, having viewed the withheld report, the Commissioner finds that it does contain frank and open testimonies from a number of Trust staff who appear to have shared their views openly with the independent investigator. He finds that these detailed accounts have enabled the investigator to thoroughly analyse the issues identified, and to present their findings and recommendations. He also finds that the participants in the investigation would not have had the expectation of their account being made public, so disclosure of the requested report would be likely to deter such candid accounts being given as evidence in the future.

30. The Commissioner is also mindful that, at the time of the request, the concerns explored in the report were live issues, and possibly still remain so. He notes that, following the investigation, NHS England has also published its own report¹ outlining the concerns, and remedial regulatory action required. He considers therefore that there is also public interest in the Trust being able to consider the report findings, and implement any necessary actions without public scrutiny of the report details.
31. The Commissioner finds that the balance of the public interest lies in maintaining the exemption for the majority of the report in this case. However due to the nature of the concerns that led to the report being required, he also finds that disclosure of the recommendations produced from the report would satisfy the public interest in assurance that the concerns raised have been thoroughly investigated, and that recommendations have been made to address them.
32. As the Commissioner has found that the Trust was entitled to rely on section 31(1)(g) to withhold the majority of the requested report, and that the recommendations can be disclosed in a way that does not contain personal information, it is not necessary for him to consider the Trust's application of section 40(2) of FOIA.

¹ [NHS England » Bradford Teaching Hospitals NHS Foundation Trust](#)

Right of appeal

33. 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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
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Water Lane
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