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Dr Minh Alexander  
By Email: [minhalexander@aol.com](mailto:minhalexander@aol.com)

Ref: Fol/19/00025

26 February 2019

Dear Dr Alexander

## **REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)**

Thank you for your request dated 21 January 2019 under the Freedom of Information (Scotland) Act 2002 (FOISA) and your e-mail of 29 January providing clarification of the request.

You asked for information about NHS Scotland Whistleblowing Champions following Health Secretary Jeane Freeman's speech on 8 October 2018 in which she stated:

"But one step I will take is that I will personally appoint each board's whistleblowing champion. So if any one of these dedicated professionals feels they are not being heard in their boards, they can come straight to me."

For ease we have provided a response to each of your questions as they arise.

**1) How many Health Board whistleblowing champions has Ms Freeman appointed since her speech? As she said in her published speech that she would personally appoint each trust's whistleblowing champion, I was interested to know how many such appointments she has personally made since giving that speech.**

Ms Freeman has not yet appointed any whistleblowing champions since her speech on 8 October 2018. The new approach to appointing whistleblowing champions, with dedicated roles, is still being developed, in partnership. An announcement on the timescales for these appointments will be made in the coming weeks. Until the dedicated role, remit and appointment process is finalised, the current whistleblowing champions will continue to undertake their existing roles.



**2) Does the Scottish Government hold data on how many Health Boards currently employ whistleblowing champions? If so, please disclose the number of champions employed by each Health Board.**

**If the data is held, please advise of the seniority and professional background of the individuals employed as whistleblowing champions.**

Health Boards do not employ whistleblowing champions. These are non-executive appointments. I enclose a copy of the names of the whistleblowing champions by Health Board. This list was last updated on 24 September 2018, and is reviewed on an annual basis, unless we have been advised of any changes.

Some of the information you have requested on the seniority and professional backgrounds is available from the links in the table provided in **the Annex** to this letter.

Pursuant to section 25(1) of FOISA, we are not obliged to provide information which is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website(s) listed, then please contact me again and I will provide a paper copy.

**3) How many whistleblowing champions have approached Ms Freeman to make 'qualifying disclosures' as defined under the Public Interest Disclosure Act since her speech of 8 October 2018?**

**For example**

- Have any whistleblowing champions disclosed to Jean Freeman that health boards' staff's concerns are being covered up by the employing health board.**
- Have any whistleblowing champions disclosed to Jean Freeman that they or health board staff are being unlawfully victimised and subjected to detriment for making public interest disclosures**

No whistleblowing champions have approached Ms Freeman to make 'qualifying disclosures' as defined under the Public Interest Disclosure Act 1998 (PIDA), since Ms Freeman made her speech on 8 October 2018.

It is important to note that a qualifying disclosure has a specific legal meaning under PIDA, which sets out the legal employment protection offered to those defined as 'workers' who raise concerns. Under PIDA, the person making the disclosure must reasonably believe that the disclosure of such information is in the public interest and that the information tends to show one or more of the following has occurred, is occurring or is likely to occur:

- a criminal offence
- an act creating risk to health and safety
- an act causing damage to the environment
- a miscarriage of justice
- a breach of any other legal obligation
- concealment of any of the above.

As such qualifying disclosures should be made directly by the worker raising their concern to their employer (in a health board this would be via their line manager or designated

whistleblowing contact). Qualifying disclosures can also be made to a 'prescribed person or body' a 'Minister of the Crown' or the worker's legal adviser.

Whistleblowing champions, in their capacity as non-executive directors are not classed as employers, and do not fall within any of the other groups to whom a qualifying disclosure can be made. If a whistleblowing champion was contacted by a member of staff wishing to make a qualifying disclosure, we would expect the whistleblowing champion to direct them to the appropriate routes for making such disclosures.

Furthermore, whistleblowing champions are not classed as workers under PIDA so could not themselves, make a qualifying disclosure under PIDA.

It is, however important to note that everyone involved in delivering services for our NHS (not just those who fall within the PIDA definition of a worker) can raise concerns they believe to be in the public interest. This would include whistleblowing champions, and other groups such as volunteers.

With this in mind, and to provide you with further clarification, no whistleblowing champions have disclosed to Ms Freeman that health board staff concerns are being covered up by a health board, or that health board staff are being unlawfully victimised and subjected to detriment for making public interest disclosures, since 8 October 2018.

Prior to 8 October 2018 between 1-5 whistleblowing champions disclosed to Ms Freeman that health board staff concerns are being covered up by a health board, or that health board staff are being unlawfully victimised and subjected to detriment for making public interest disclosures. We are unable to advise you of the exact numbers as this could potentially identify any individual(s) involved in the case(s).

#### **4) Does the Scottish Government consider that the Health Secretary a Prescribed Person under the Public Interest Disclosure Act?**

**If not, does the Scottish Government have plans to ensure that disclosures by whistleblowers to the Scottish Government have legal 'protected' status that is at least equivalent to disclosures made to Prescribed Persons under the Public Interest Disclosure Act?**

Disclosures can be made to a 'Minister of the Crown' and this includes the Scottish Ministers and the Scottish Executive. Disclosures made to a Minister of the Crown have the same legally 'protected' status, as those made to a prescribed person or body.

A list of prescribed people and bodies is published by the UK Government. This is attached at the link below:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

#### **5) Has the Scottish government, and or any of its central agencies, established any central means of tracking**

**a) disclosures by Health Board staff that received by Health Board whistleblowing champions**

The Scottish Government collects information on the total number of stage 2 (investigation stage) whistleblowing cases raised by Health Board staff as part of our annual Staff Governance Monitoring return, but does not specifically track disclosures made by health board staff to whistleblowing champions.

Decisions relating to how any statistics are collected on disclosures by Health Board staff received by whistleblowing champions, are currently matters for each individual Health Board within the framework of their local whistleblowing policy and procedures.

### **b) disclosures made by Health Board whistleblowing champions to the Scottish Government, including to the Health Secretary?**

Correspondence to the Scottish Government, including the Health Secretary is tracked on the Scottish Government's Ministerial and Corporate Correspondence System and/or stored on the Scottish Government's Electronic Record Document Management system, in line with data protection legislation and regulations.

### **Your right to request a review**

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to [DGHSC@scotland.gsi.gov.uk](mailto:DGHSC@scotland.gsi.gov.uk). Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

I hope this information is helpful.

Yours sincerely,

Alison Carmichael  
Staff Governance Associate

**Whistleblowing Champion list – last updated 24.09.18**

NHS Ayrshire and Arran	Lesley Bowie	<a href="https://www.nhsaaa.net/about-us/how-we-make-decisions/whos-who/leslie-bowie/">https://www.nhsaaa.net/about-us/how-we-make-decisions/whos-who/leslie-bowie/</a>
NHS Borders	Karen Hamilton	<a href="http://www.nhsborders.scot.nhs.uk/corporate-information/board-members/">http://www.nhsborders.scot.nhs.uk/corporate-information/board-members/</a>
NHS Dumfries & Galloway	Lesley Bryce	<a href="https://www.linkedin.com/in/lesley-bryce-933168b2">https://www.linkedin.com/in/lesley-bryce-933168b2</a>
NHS Fife	Rona Laing	<a href="https://www.nhsfife.org/nhs/index.cfm?fuseaction=page.groupmember&amp;orgid=60304279-A856-11D6-BF4D0002A5349AC9&amp;personid=42369243-E57B-F98A-563EB8895D501D5C">https://www.nhsfife.org/nhs/index.cfm?fuseaction=page.groupmember&amp;orgid=60304279-A856-11D6-BF4D0002A5349AC9&amp;personid=42369243-E57B-F98A-563EB8895D501D5C</a>
NHS Forth Valley	Michele McClung	<a href="https://nhsforthvalley.com/member-appointed-to-forth-valley-nhs-board/">https://nhsforthvalley.com/member-appointed-to-forth-valley-nhs-board/</a>
NHS Highland	Robin Creelman	<a href="https://www.nhshighland.scot.nhs.uk/Meetings/Pages/NHSHighlandBoard.aspx">https://www.nhshighland.scot.nhs.uk/Meetings/Pages/NHSHighlandBoard.aspx</a>
NHS Grampian	Rhona Atkinson	<a href="http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=2&amp;ved=2ahUKEwi2toSE3obgAhWFPOwKHdDFD_oQFjABegQICRAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F42047%2Fgrampian-nhs-board-non-executive-member-reappointments-2018-rhona-atkinson-news-release.docx&amp;usq=AOvVaw381xUjvceemXqESrY4-ljS">http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=2&amp;ved=2ahUKEwi2toSE3obgAhWFPOwKHdDFD_oQFjABegQICRAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F42047%2Fgrampian-nhs-board-non-executive-member-reappointments-2018-rhona-atkinson-news-release.docx&amp;usq=AOvVaw381xUjvceemXqESrY4-ljS</a>
NHS Greater Glasgow & Clyde	Morag Brown	<a href="https://www.nhsggc.org.uk/about-us/nhsggc-board/board-members-profiles/morag-brown/">https://www.nhsggc.org.uk/about-us/nhsggc-board/board-members-profiles/morag-brown/</a>
NHS Lanarkshire	Philip Campbell	<a href="http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=2&amp;ved=2ahUKEwitiLzK34bgAhWCZVAKHbr6Dz4QFjABegQIBxAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F28939%2Flanarkshire-nhs-member-reappointments.docx&amp;usq=AOvVaw3EGQeR120EarlhmDDCKvjn">http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=2&amp;ved=2ahUKEwitiLzK34bgAhWCZVAKHbr6Dz4QFjABegQIBxAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F28939%2Flanarkshire-nhs-member-reappointments.docx&amp;usq=AOvVaw3EGQeR120EarlhmDDCKvjn</a>
NHS Lothian	Alison Mitchell	<a href="https://www.nhslothian.scot.nhs.uk/OurOrganisation/BoardCommittees/LothianNHSBoard/BoardMembers/Pages/default.aspx">https://www.nhslothian.scot.nhs.uk/OurOrganisation/BoardCommittees/LothianNHSBoard/BoardMembers/Pages/default.aspx</a>
NHS Orkney	Caroline Evan	<a href="http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=1&amp;ved=2ahUKEwifxJu64obgAhWSPowKHfawA_YQFjAAeqQICRAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F42089%2Fnhs-orkney-member-appointment-2018.doc&amp;usq=AOvVaw2UZvTEhG1nxmuBBD8gLFcx">http://www.google.co.uk/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=1&amp;ved=2ahUKEwifxJu64obgAhWSPowKHfawA_YQFjAAeqQICRAC&amp;url=http%3A%2F%2Fwww.appointed-for-scotland.org%2Fmedia%2F42089%2Fnhs-orkney-member-appointment-2018.doc&amp;usq=AOvVaw2UZvTEhG1nxmuBBD8gLFcx</a>
NHS Shetland	Marjorie Williamson	<a href="https://www.shb.scot.nhs.uk/board/interests.asp">https://www.shb.scot.nhs.uk/board/interests.asp</a>



NHS Tayside	Trudy McLeay	<a href="https://www.nhstayside.scot.nhs.uk/YourHealthBoard/BoardMembers/PROD_297608/index.htm">https://www.nhstayside.scot.nhs.uk/YourHealthBoard/BoardMembers/PROD_297608/index.htm</a>
NHS Western Isles	Ian Burgess	<a href="https://www.wihb.scot.nhs.uk/news/item/701-mr-ian-burgess-appointed-chair-of-nhs-western-isles">https://www.wihb.scot.nhs.uk/news/item/701-mr-ian-burgess-appointed-chair-of-nhs-western-isles</a>
NHS 24	Juliana Butler	<a href="https://www.nhs24.scot/members/dr-julianna-butler/">https://www.nhs24.scot/members/dr-julianna-butler/</a>
NHS Education for Scotland	Linda Dunion	<a href="https://www.nes.scot.nhs.uk/contact-us/contact-finder/linda-dunion.aspx">https://www.nes.scot.nhs.uk/contact-us/contact-finder/linda-dunion.aspx</a>
NHS Health Scotland	Ali Jarvis	<a href="http://www.healthscotland.scot/our-organisation/our-board-and-executive-team/nhs-health-scotland-board">http://www.healthscotland.scot/our-organisation/our-board-and-executive-team/nhs-health-scotland-board</a>
Healthcare Improvement Scotland	Bryan Anderson	<a href="http://www.healthcareimprovementscotland.org/news_and_events/news/news_new_board_members.aspx?theme=mobile">http://www.healthcareimprovementscotland.org/news_and_events/news/news_new_board_members.aspx?theme=mobile</a>
National Services Scotland	John Deffenbaugh	<a href="https://nhsnss.org/how-nss-works/our-board/board-members/">https://nhsnss.org/how-nss-works/our-board/board-members/</a>
National Waiting Times Centre	Marcella Boyle	<a href="https://www.nhsgoldenjubilee.co.uk/about/our-board/non-executive-members/">https://www.nhsgoldenjubilee.co.uk/about/our-board/non-executive-members/</a>
State Hospital Board for Scotland	Maire Whitehead	<a href="https://www.tsh.scot.nhs.uk/Board/Whos_Who.html">https://www.tsh.scot.nhs.uk/Board/Whos_Who.html</a>
Scottish Ambulance Service	Neelam Bakshi	<a href="https://www.scottishambulance.com/TheService/MembersDetails.aspx">https://www.scottishambulance.com/TheService/MembersDetails.aspx</a>

