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From: REDACTED (NHS ENGLAND & NHS IMPROVEMENT - X24) <england.foicrm@nhs.net>

To: Minh Alexander <REDACTED>

Sent: Tue, 31 May 2022 15:26

Subject: NHS Improvement: Request under the Freedom of Information Act 2000 (the "FOI Act") - Our ref: FOI - 2204-1746212 NHSE:0023756

To: Minh Alexander

Via email: REDACTED

Request under the Freedom of Information Act 2000 (the "FOI Act")

We refer to your email of 10th May 2021, in which you requested information under the FOI Act from NHS Improvement.

The Healthcare Safety Investigation Branch (HSIB) is the safety investigation branch of the National Health Service Trust Development Authority, established under the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016. HSIB has been operational since 01 April 2017.

HSIB was set up to discharge the Secretary of State duties in relation to the promotion of a comprehensive health service and securing continuous improvement in the quality of services. Its purpose is to conduct effective investigations, and by sharing what we learn, improve patient safety, raise standards, and support learning across the healthcare system in England.

In 2017 the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) (Additional Investigatory Functions in respect of Maternity Cases) Directions 2018 gave additional functions to HSIB in respect of maternity cases.

Monitor and the National Health Service Trust Development Authority have come together under the operational name NHS Improvement, combining the functions and responsibilities of the two statutory bodies in a single integrated organisation. For the purposes of this letter, NHS Improvement means the National Health Service Trust Development Authority.

Your request

You made the following request:

The King's Fund review report on HSIB of January 2022 states that HSIB staff were unhappy with previous reviews and their handling, and believed that these earlier reviews were swept under the carpet.

Please disclose how many earlier HSIB reviews were conducted and when

Please disclose why these reviews were conducted

Please disclose copies of these reviews

Please disclose what follow up action was taken after these reviews

*Please advise since HSIB became operational , how many concerns by HSIB staff in total have been raised with the NHSE/I Freedom to Speak Up Guardian?
Who is the NHSE/I Freedom to Speak Up Guardian? What is their role and level of seniority?*

Decision

NHS Improvement holds the information you have requested and has decided to release the information it holds. Our response is below:

1. Please disclose how many earlier HSIB reviews were conducted and when.

An internal review of our maternity team was undertaken in 2020. This was led by Dr Nick Woodier, Dr Dawn Benson and David Landreth at HSIB. From this review, a slide deck report was produced and delivered in June 2020.

2. Please disclose why these reviews were conducted

The review referred to under Question 1 was commissioned by and for the review of the Exec. Team at HSIB. They wanted to understand stakeholder's opinion of the maternity services. There were responses back from 54 trusts and a total of 247 staff, mainly midwifery but also other clinical and medical leads including ambulance staff. The idea was to use that feedback, in confidence, to understand what themes HSIB should address to improve our practices within the maternity team when undertaking an investigation.

3. Please disclose copies of these reviews.

Please find attached a copy of the review final document.

Please note that we have redacted information within this document under Section 40(2) (personal information) and Section 41 (information provided in confidence).

Section 40(2) - personal information

We consider certain information to be exempt under section 40 of the FOI Act.

Information is exempt under section 40(2) where that information constitutes personal data (other than that of the requester) and one of the conditions set out in section 40(3) is satisfied. Under the FOI Act disclosure of this information would contravene data protection principles. Section 40(2) is an absolute exemption and therefore not subject to the public interest test when considering disclosure of information.

In this instance, the name and contact details of all staff members at or below Band 9 have been withheld, as have job titles in instances where the release of that information could be reasonably used to identify individuals who have a reasonable expectation of privacy.

Section 41 – information provided in confidence

Information has been withheld under Section 41 of the FOI Act, which exempts from the general duty to release information provided in confidence.

Section 41(1) provides that information is exempt if:

- a) it was obtained by the public authority from any other person (including another public authority), and
- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The test in section 41(1)(a) is met as the information that has been provided to HSIB was received from another person. In this instance, the information was provided to HSIB (i.e. the employer) by its employees.

The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. This means:

- i) the information must have the necessary quality of confidence about it;
- ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- iii) disclosure must amount to an unauthorised use of the information to the detriment of the confider.

We consider that the withheld information has been obtained by NHS Improvement and it meets the required threshold under section 41(1)(b).

The info was shared in confidence to HSIB by its staff to improve how its maternity functions operates. The information that has been shared is not trivial and has not been published elsewhere. Given the circumstances in which this information was provided, we consider it was imparted in circumstances giving rise to an obligation of confidence.

Furthermore, we consider that disclosing this information would cause detriment to the confiders and there is an expectation that this type of information should not be disclosed under the FOI Act.

Section 41 is an absolute exemption and does not require the application of the public interest test. However, we acknowledge that in considering whether (in an action for breach of confidence) a confidence should be upheld, a court will have regard to whether the public interest lies in favour of disclosure. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. In the present circumstances, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence.

4. Please disclose what follow up action was taken after these reviews

Please find attached an action plan which was a direct result of the aforementioned review in Questions 1-3.

5. Please advise since HSIB became operational, how many concerns by HSIB staff in total have been raised with the NHSE/I Freedom to Speak Up Guardian?

NHSE/I Guardians have received 15 FTSU cases relating to HSIB (this covers 20/21 and 21/22).

6. Who is the NHSE/I Freedom to Speak Up Guardian? What is their role and level of seniority?

There are 55 NHSE / I Freedom to Speak Up Guardians across almost all regions and directorates. These Guardians are made up of staff from various roles and various levels of seniority.

Review rights

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you may seek an internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement’s staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Skipton House, 80 London Road, London SE1 6LH or by email to nhsi.foi@nhs.net.

Publication

We reserve the right to publish this letter on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g., your name and contact details) from any version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,

NHS Improvement

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