

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 2223 0419

Date of Response: 7 October 2022

Information Requested:

“Please could the CQC as a matter under the FOIA disclose the following:

1) Please disclose the sections from CQC's correspondence to Matt Hancock Health Secretary about Mr Kumar's case that relate to

- general issues of CQC inspection policy and practice, and***
- CQC's use and deployment of Specialist Advisors and***
- whether CQC only uses Specialist Advisors for inspecting areas where they are expert.***
- whether CQC ensures there are enough Specialist Advisors to cover each inspection safely.***

2) Since Mr Kumar raised his concerns in September 2018 about a chaotic CQC inspection at East Lancashire Hospitals NHS Trust, and since Hugh Cannell another former CQC Specialist Advisor published in 2019 these wide ranging and serious concerns about the CQC's inspection practice in a journal of the Royal College of Surgeons:

"The Care Quality Commission and Specialist Advisors in Surgery. Who shall inspect the inspectors"

<https://minhalexander.files.wordpress.com/2022/08/rcs-bulletin-the-cqc-and-specialist-advisors-in-surgery.-who-shall-inspect-the-inspectors.pdf>

a. Has the CQC reviewed and or audited its policy, practice and deployment of Specialist Advisors during inspections?

Please disclose the methodology and reports and results from any such exercise.

b. Has the CQC undertaken any in depth survey of Specialist Advisors for their views and experiences of working for the CQC, in response to the concerns raised by Specialist Advisors like Mr Kumar and Mr Cannell?

3) Please disclose the results of CQC's last three annual staff surveys for the specific staff group of CQC Specialist Advisors

4) Please disclose any analysis since 1 January 2018 of the routine feedback questionnaires completed by CQC Specialist Advisors after inspections

Please disclose a copy of the questionnaire itself

5) How many Specialist Advisors have resigned from the CQC since 1 January 2018?"

The Information Access team has now coordinated a response to your request.

CQC has considered your request in accordance with the Freedom of Information Act 2000 (FOIA).

Our first obligation under the legislation is to confirm whether we do or do not hold the requested information.

In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold some recorded information in relation to this matter.

We will respond to each of your points in turn.

1) Please disclose the sections from CQC's correspondence to Matt Hancock Health Secretary about Mr Kumar's case that relate to

- general issues of CQC inspection policy and practice, and**
- CQC's use and deployment of Specialist Advisors and**
- whether CQC only uses Specialist Advisors for inspecting areas where they are expert.**
- whether CQC ensures there are enough Specialist Advisors to cover each inspection safely.**
- Was there a safeguarding emergency due to understaffing and/or overworked staff?**

CQC Chief Executive Ian Trenholm wrote a letter to the Secretary of State for Health and Social Care on 4 September 2019. The following parts of the letter fall within the scope of your request.

Inspection findings

- *SpAs form a key part of CQC's inspection team and as part of the inspection would talk through the areas they have looked at and raise any concerns during the inspection process. Any concerns are taken in context of other information collected to form an overall view of that service.*
- *The [published evidence appendix](#) provides the supporting evidence that enabled us to come to our judgements of the quality of service provided. It is based on a combination of information provided to us by the trust, nationally available data, what we found when we inspected, the contributions of specialist advisers and information given to us from patients, the public and other organisations.*

Our inspection methodology

- *SpAs provide expert input on the quality of the service from a clinical perspective in a broad sense across the service, as well as on particularly specialties within the service. There are many different surgical and medical specialties, and it would not be possible or appropriate to bring SpAs to inspect every one of those specialties in detail on inspections.*

CQC's pre-publication process

- *Sharing with SpAs copies of draft reports is not routinely part of CQC's pre-publication process. If we require any additional information or clarification from a SpA, we would contact them directly. SpAs sit with the whole inspection team at the conclusion of the on site portion of the inspection to share views so have sufficient opportunity to talk about the areas they have seen.*

In 2019-20 we will be starting to discuss, design and develop our regulatory approach, including how we monitor, inspect and rate in the future. Providers, members of the public and staff, including specialist advisers will be able to contribute once we consult on our new approach. It may also be helpful to know that each year we ask for the opinions of specialist advisers as part of an annual inspection team survey which we use to improve how we inspect services.

We would be happy to provide you with any further information about our inspection processes

Sections of the letter that relate directly to Mr Kumar and his involvement in CQC inspections fall outside of the scope of your request and therefore have not been included. No other substantive content of the letter has been omitted or withheld.

**2) Since Mr Kumar raised his concerns in September 2018 about a chaotic CQC inspection at East Lancashire Hospitals NHS Trust, and since Hugh Cannell another former CQC Specialist Advisor published in 2019 these wide ranging and serious concerns about the CQC's inspection practice in a journal of the Royal College of Surgeons:
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a. Has the CQC reviewed and or audited its policy, practice and deployment of Specialist Advisors during inspections?

Please disclose the methodology and reports and results from any such exercise.

b. Has the CQC undertaken any in depth survey of Specialist Advisors for their views and experiences of working for the CQC, in response to the concerns raised by Specialist Advisors like Mr Kumar and Mr Cannell?

CQC has not currently reviewed its policies or undertaken any surveys in relation to Specialist Advisors (SPAs). However, CQC has instructed Zoe Leventhal KC to conduct an independent review into the handling of protected disclosures. The review is expected to conclude by the end of 2022. You can find more information on

our website: <https://www.cqc.org.uk/news/independent-review-handling-protected-disclosures-announced-alongside-wider-review>.

3) Please disclose the results of CQC's last three annual staff surveys for the specific staff group of CQC Specialist Advisors

Colleagues eligible to participate in our people surveys (also referred to as staff surveys) include permanent staff, fixed term and/or temporary staff, National Professional Advisors and Clinical Fellows. Contractors, bank staff, or SPAs are not eligible to participate.

**4) Please disclose any analysis since 1 January 2018 of the routine feedback questionnaires completed by CQC Specialist Advisors after inspections
Please disclose a copy of the questionnaire itself**

Please find attached a copy of the SPA questionnaire. Due to the format of the questionnaire, we have had to take screenshots of the questions. We do not hold any analysis of this data.

5) How many Specialist Advisors have resigned from the CQC since 1 January 2018?"

We do not hold this information centrally and so a manual review of each personal record would be required to ascertain why they exited CQC. Therefore, we are unable to provide you with the requested information as we believe the cost of doing so would exceed the cost limit as defined by s12 of the FOIA.

You can find more information under the 'exemption from the right to know' section.

The following provides an explanation of the FOIA.

The Freedom of Information Act 2000

The purpose of FOIA is to ensure transparency and accountability in the public sector. It seeks to achieve this by providing anyone, anywhere in the world, with the right to access recorded information held by, or on behalf of, a public authority.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

Public authorities spend money collected from taxpayers and make decisions that can significantly affect many people's lives. Access to information helps the

public make public authorities accountable for their actions and allows public debate to be better informed and more productive.

The main principle behind FOIA is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

A disclosure under FOIA is described as “applicant blind” meaning that it is a disclosure into the public domain, not to any one individual.

This means that everyone has a right to access official information. Disclosure should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by FOIA.

An applicant does not need to give a reason for wanting the information. On the contrary, the public authority must justify refusing the information.

Public authorities are required to treat all requests equally, except under some limited circumstances. The information someone can access under FOIA should not be affected by who they are, whether they are journalists, local residents, public authority employees, or foreign researchers.

Exemption from the right to know

FOIA also recognises that there may be valid reasons for withholding information by setting out several exemptions from the right to know, some of which are subject to a public interest test.

Exemptions exist to protect information that should not be disclosed into the public domain, for example because disclosing the information would be harmful to another person or it would be against the public interest.

A public authority must not disclose information in breach of any other law.

When a public authority, such as CQC, refuses to provide information, it must, in accordance with section 17 of FOIA, issue a refusal notice explaining why it is unable to provide the information.

Section 12 - Exemption where cost of compliance exceeds appropriate limit

CQC considers part 5 of your request to be exempt from disclosure under section 12 of the Act.

Section 12 of FOIA applies where the cost to CQC of complying with any individual request would exceed £450. In such cases, CQC cannot comply with the request for information.

This information is not held centrally, so we would need to manually check each personal record to ascertain the reason each SPA exited CQC.

We estimate that performing a search for information across these records would significantly exceed this limit as we anticipate it would take a minimum of six minutes per record. This would total over 305 hours to complete.

As a public authority we wish to be transparent and open about our work, but we have a statutory responsibility to use our resources effectively and FOIA requests are not the only demand on the resources of a public authority.

Paragraph 2(3) of Schedule 1 to the Health and Social Care Act 2008 states that *“It is the duty of the Commission to carry out its functions effectively, efficiently and economically.”*

A public authority, such as CQC, is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

In calculating whether this appropriate limit is exceeded, regulation 4(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 requires that the time taken in responding to requests (locating, retrieving and extracting the information) must be calculated at a rate of £25 per person per hour. Therefore, any requests where it would take over 18 hours to locate, retrieve and extract the information would exceed £450.

CQC estimates to search our records for the requested information would take significantly longer than 18 hours and we are therefore refusing to comply with any part of it.

In making this decision we have referred to guidance published on the Information Commissioner’s office (ICO) website:

https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Advice and assistance

Under section 16 of the Freedom of Information Act 2000 (and in accordance with the section 45 code of practice) we have a duty to provide you with reasonable advice and assistance.

You may wish to significantly narrow the scope of your request, for example, by requesting this information for a much shorter time frame.

If you need any independent advice about individual’s rights under information legislation you can contact the Information Commissioner’s Office (ICO).

The ICO is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The contact details for the ICO are detailed below.

There is useful information on the ICO website explaining the rights of individuals:

www.ico.org.uk/your-data-matters

CQC Complaints and Internal Review procedure

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review.

Please note that it is usual practice to accept a request for an internal review within 40 working days from the date of this response. The [FOIA code of practice](#) advises that public authorities are not obliged to accept internal reviews after this date.

Please be aware that the review process will focus upon our handling of your request and whether CQC have complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise concerns about the provision of care or the internal processes of other CQC functions.

If you are unhappy with other aspects of the CQC's actions, or of the actions of registered providers, please see our website for information on how to raise a concern or complaint:

www.cqc.org.uk/contact-us

To request a review please contact:

Information Access

Care Quality Commission

Citygate

Gallowgate

Newcastle upon Tyne

NE1 4PA

E-mail: information.access@cqc.org.uk

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the internal appeals process has been exhausted.

The contact details are:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

SK9 5AF

Telephone: 0303 123 1113

Website: www.ico.org.uk