

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 2324 0690

Date of Response: 29 November 2023

The Information Access team has now coordinated a response to your request. This is a follow up request handled under the above reference number, to your previous request handled under CQC IAT 2324 0556 which was responded to on 11 October 2023.

CQC has considered your further request for information 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 recorded information in relation to this matter.

We will endeavour to address each part of your request in the same order in which you raised them as follows:

“Can you tell me if CQC rejected any of these external investigation reports that were commissioned by NHS trusts (and if so which ones), or did it accept them all?”

On the 9 November we requested that you clarify what you specifically meant in relation to the above point. You subsequently advised the following:

“By rejected, I mean “Did CQC find the reports to be unacceptable in nature or quality?”

For example, were any of the reports so unacceptable that CQC therefore asked for further reports or re-investigation and/or revision of some aspect of the reports?”

CQC has not rejected a report in the manor which you describe.

Could the CQC give the numbers of FPPR investigations undertaken by each of these listed seventeen external contractors?

Tamarix People (4)

Fiona Scolding KC (2)
Unique Health Solutions (2)
Law2Business (1)
Serjeants Inn Chambers / Clyde & Co (1)
Mark Sutton KC (1)
Bevan Brittan (1)
Deloitte (2)
Cordis Bright Consulting (1)
YSC - Young Samuel Chambers (1)
Good Governance Institute (1)
Capsticks Solicitors (3)
Ibex Gale (2)
EY (1)
3 Independent Individuals (3)

Why is a distinction made between investigations by barristers who are named, and investigations by three “independent individuals” who are not named? Why were the identities of these three independent individuals withheld?

In our response to your previous request (CQC IAT 2324 0556) we should have applied the exemption under section 40(2) of FOIA (“personal information”) to withhold the names of the 3 individuals who worked as independent contractors.

I apologise on behalf of CQC that this exemption was not stated or explained in that response.

In assessing whether to apply the section 40(2) exemption, a key consideration is whether disclosure of the information into the personal data would be fair (as required under the 1st Data Protection Principle in Article 5 of GDPR).

We made the assessment that barristers commissioned to undertake this work would have a reasonable expectation that their identities may be disclosed and that disclosure under FOIA would therefore be fair.

We do not know what the reasonable expectation of the other individuals would be but, on the balance of probability, decided that it was likely that they would not expect their names to be publicly disclosed. On that basis we determined that disclosure would be likely to breach the first Data Protection Principle.

If you are not satisfied with the application of this exemption, you may challenge this decision following the process set out later in this letter.

I believe there is a public interest issue in disclosing which NHS trusts commissioned investigations by some of the external contractors.

Could the CQC advise to which NHS trusts the following FPPR investigations related?

We consider this information to be exempt from disclosure under the FOIA because the information was provided to CQC in confidence. This engages the exemption outlined at section 41 of the FOIA 2000, an explanation of the exemption is provided later in this response.

However, where you have detailed additional questions below we have provided answers indicated by the blue text.

1. FPPR investigations by the Good Governance Institute

There are serious questions about the Good Governance Institute since it employed Mason Fitzgerald a former NHS director who was sacked following a false CV claim.

Further questions were raised by BBC Newsnight investigation which revealed irregularities about how the organisation represented the qualifications of its officers and its non-sanctioned use of the word 'Institute' in its name.

Moreover, questions remain about the role of the GGI at University Hospitals Sussex NHS Foundation Trust, the handling of staff concerns/ staff who raise concerns, management of surgical services and related deaths that are now under police investigation.

Can you indicate on which NHS trusts the Good Governance Institute carried out FPPR investigation(s), and in particular if this included University Hospitals Sussex NHS Foundation Trust or its predecessor bodies?

CQC has not received a GGI report for University Hospitals Sussex NHS Foundation Trust or its predecessor bodies

Please give the dates of any FPPR investigations on University Hospitals Sussex NHS Foundation Trust or its predecessor bodies. Did any FPPR investigation(s) precede the appointment of Darren Grayson GGI partner as Chief Governance Officer by University Hospitals Sussex NHS Foundation Trust?

Predecessor body Brighton & Sussex Trust October 2016, Sussex Partnership Trust Sept 2020, University Hospitals Sussex Sept 2023. Darren Grayson was appointed in March 2022.

2. FPPR investigations by Law2Business

I believe from Companies House that Law2Business is the now defunct company of Gary Hay former Capsticks Partner and current NED at Portsmouth Hospitals University NHS Trust.

A conflict of interest was criticised by whistleblower Martyn Pitman's barrister who pointed out at a recent ET hearing that Gary Hay was hired to investigate the handling of Mr Pitman's grievance by Hampshire Hospitals NHS Foundation Trust, when there are close connections between the two trusts. The example Mr Mitchell gave was that the Chair of Hampshire was a former NED at Portsmouth.

In addition, the former Director of Workforce of Portsmouth is now Hampshire's Chief People Officer. A retired medical director of Portsmouth serves as a NED at Hampshire. Both were detrimentally involved in the whistleblower case of Dr Jasna Macanovic at Portsmouth.

Please can the CQC disclose whether Law2Business has conducted any FPPR investigations on either Portsmouth Hospitals University NHS Trust or Hampshire Hospitals NHS Foundation Trust.

CQC has not received a report from Law2Business in relation to an FPPR investigation on either Portsmouth Hospitals University NHS Trust or Hampshire Hospitals NHS Foundation Trust

3. FPPR investigations by Mark Sutton KC

Mr Sutton represented Hampshire Hospitals NHS Foundation Trust against whistleblower Martyn Pitman

Mr Sutton also represented Portsmouth Hospitals University NHS Trust against Dr Jasna Macanovic in her remedy hearing.

Please disclose if he provided Portsmouth Hospitals University NHS Trust the KC opinion that Dr John Knighton medical director was a Fit and Proper Person despite being found to be directly responsible for her predetermined, unfair dismissal expressly for whistleblowing, in concert with the director of nursing.

Dr Knighton's actions were especially serious because he offered Dr Macanovic the chance to leave with a good reference DURING the disciplinary hearing.

This is obviously very wrong.

He either had sound evidence for dismissal and should not have made such an offer, or if he did not have sound evidence to justify dismissal, it was highly abusive to proceed with dismissal.

It was astonishing that whoever undertook the FPPR investigation reportedly assured Portsmouth that there was no breach of FPPR.

I say “reportedly” as I only have Portsmouth’s word for it. Of course, I also have the CQC’s third hand report that no breach was found.

Please disclose if Mark Sutton did indeed provide the barrister opinion for Portsmouth on John Knighton’s fitness under CQC Regulation 5.

The report received from the trust regarding the FPPR referral for Dr John Knighton was written by Mark Sutton, KC.

Lastly, the CQC says it does not hold information on how many FPPR investigations took place in the 96 cases that it followed up after FPPR referrals about NHS trust directors and in particular, it does not know how many internal investigations took place (although it has received three internal reports).

That is, CQC received only 30 investigation reports on the 96 referrals that it followed up (27 external, three internal).

So how did CQC satisfy itself that there was no problem in the cases where there was no FPPR investigation?

The CQC received information from the trusts that either gives assurance for regulation 5 on each of its directors or confirms what the trust is doing to ensure the regulation is being met. There are referrals recorded where directors have left the NHS during the process which would not have resulted in an investigation or report.

Did the CQC receive any referrals on the directors of the Countess of Chester Hospital NHS Foundation Trust after FPPR came into force in 2014?

There were no referrals prior to September 2023.

CQC cannot currently comment on any FPPR referrals that we may have received subsequent to the criminal conviction of Lucy Letby.

We consider this information – including confirming whether or not CQC has received referrals – to be exempt from disclosure under section 31 of FOIA (law enforcement / prejudice to regulatory functions).

We recognise the public interest in transparency on this matter but consider that there is an overriding public interest in prevention of any prejudice.

If so, were these FPPR referrals subject to any investigation, whether internal or external? .

As above

Or were they closed without investigation?"

N/A

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 41 – Information provided in Confidence

We consider the requested information to be subject to the exemption from the right to know provided at section 41(1) of FOIA because it relates to information provided to CQC in confidence.

Section 41(1) states:

“(1) Information is exempt information if –

It was obtained by the public authority from any other person (including another public authority), and

(a) 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.”

Section 41 applies where information has been obtained from any other person or organisation and where disclosure could constitute an actionable breach of confidence.

Our website includes information about how we will use personal data (information that relates to and identifies living people) and other information to help us to carry out our role as the regulator of health and adult social care services in England:

www.cqc.org.uk/about-us/our-policies/privacy-statement

Our code of practice details how we obtain, handle and use personal information.

The code can be viewed or downloaded through the above link.

Individual(s) (such as members of the public and whistle blowers) who have shared information with CQC have done so with a reasonable expectation of confidentiality.

They would not expect CQC to disclose the information into the public domain under FOIA.

A duty of confidence arises when one person (the “confidant”) is provided with information by another (the “confider”) in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. If there is a breach of confidence, the confider or any other party affected (for instance a person whose details were included in the information confided) may have the right to take action through the courts.

CQC considers that disclosure of this information would be a potentially actionable breach of that duty of confidence therefore CQC will not provide the information covered by this exemption.

Individuals would not expect a public authority such as CQC to share information, which could in turn identify them, with the wider public under FOIA.

We can confirm that in making this decision we have referred to guidance issued by 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.

Specifically, the guidance recognises that the information need not be highly sensitive. The preservation of confidences is recognised by the courts to be an important matter and one in which there is a strong public interest.

We consider that there is a strong public interest that CQC, as the regulatory body, has an important role to perform, and should not be seen to be disclosing certain information about individuals and organisations without their consent.

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.

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