

Request Reference: FOI/043/22

Published: 22 March 2023

Information requested:

That I am provided all statements from staff members who made formal written statements, signed and unsigned in direct relation to the incident which happened on 9th April 2017 within Lewis Hub, ward 1, The State Hospital.

These statements correlate to the result of a CIR review that the hospital undertook as a consequence of this incident.

Response:

We searched our records and located nine files that are the write up of interviews with staff in relation with the incident.

Eight of these files are the personal information of individuals and are exempt from disclosure under FOISA Section 38(1)(b) - personal information of individuals.

One of these files is the personal information of the applicant and is exempt from disclosure under FOISA Section 38(1)(a) – personal information of the applicant. Please see the advice and guidance section.

All the information in the nine files was provided with the expectation of confidentiality by the interviewees. Therefore, this information is exempt from disclosure under FOISA Section 36(2) – confidentiality.

In addition, all the files are exempt from disclosure under FOISA Section 30(c) because disclosure would likely substantially prejudice the effective conduct of public affairs.

Advice and Guidance

When information is made available via the Freedom of Information (Scotland) Act 2002 it is made public and published, any answers provided to one applicant should be provide to anyone who asks for it.

Personal Information

We consider all the files located through our search to be the personal information of the individual that provided it. These records represent the recollections of, and comments relating to, their witnessing of the incident. The information clearly relates to them and they are identifiable from the information contained in the files alone and in conjunction with other information held by the State Hospital.

Eight files relate to individuals that are not the applicant. We considered if we were able to provide the information without contravening the data protection principles, but we concluded that there was not an appropriate legal basis to provide the information and that disclosure would not be fair.

In particular, we considered that;

- Consent of the individuals was not sought at the time of recording the information to publish it and it is very unlikely that consent would be given by the individuals to publish the information, if asked.
- There is no contractual requirement for individuals to have this information published.

- There is no legal obligation that requires us to publish this information, even if FOISA gives us a legal basis to use personal information to respond to requests.
- There is no apparent 'vital interest' needing protected.
- Disclosure is not required in order for the performance of the tasks that the State Hospital carries out in the public interest.
- Whilst it may be in the applicant's 'legitimate interest' for this information to be disclosed, we took the view that such interests were overridden by the interests, fundamental rights and freedoms of the other parties.
- Individuals had no expectation that information identifying them would be made public at any time in the future.

As we are unable to identify a legitimate legal basis and that the proposed publication of this information is not what individuals expected, we are unable to comply with the first data protection principle. This means that this information is subject to an absolute exemption from disclosure.

One of the files relates to the applicant of this request and as such, there is an absolute exemption on the disclosure of this information.

The applicant has the right to ask for a copy of information relating to themselves through the UK GDPR right of access, also known as a subject access request.

To make a subject access request, contact TSH.DataProtection@nhs.scot with a description of the information that you are seeking.

Confidentiality

The State Hospital's policy RR01 Incident Reporting and Review Policy sets out measures that need taken to protect the privacy and confidentiality of all those involved in incident reviews. Therefore, all interviewees had an expectation that the information provided would remain confidential and as such, there is an absolute exemption from disclosure.

Prejudice to Effective Conduct of Public Affairs

All of the information was collected to support a Critical Incident Review (CIR). This process is extremely important to the investigation of, and learning from, incidents. The proper investigations of incidents allows the organisation to learning from these incidents and as necessary change our practices. If we were to publish this information, it would be highly likely that staff, patients, careers and others would not provide their candid views on incidents in the future. This would have a substantial impact on our ability to properly investigate incidents that occur and subsequently our ability to minimise risks to patients, staff, volunteers and visitors.

The exemption for the prejudice of conduct of public affairs is a qualified exemption and is subject to a public interest test. We consider that the public interest is best served by The State Hospital being able to conduct incident reviews effectively.

Types of Exemptions

Under FOISA there are qualified exemptions and absolute exemptions.

An absolute exemption is an exemption that applies once the criteria for it have been satisfied.

A qualified exemption is an exemption that applies once the criteria for it have been satisfied and a public interest test shows that it is not in the public interest to disclose the information.