

30 January 2018

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██████████
By email
████████████████████

Dear ██████████

Request under the Freedom of Information Act 2000 (the “FOI Act”)

I refer to your email of 2 January 2018 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, the Patient Safety functions under section 13R of the NHS Act 2006 have been exercised by the NHS Trust Development Authority, as part of the integrated organisation known as NHS Improvement.

Your request

You made the following request:

“In your Reporting and Learning System for Patient Safety how many Documentation incidents were recorded in the last financial year (2016/17) where the degree of harm was recorded as “death”.

I would be grateful if you could provide me with a similar table to that provided as a response to FoI supplied to me relating to drug errors, giving a brief three or four sentence summary of each documentation incident that was recorded in the last financial year (2016/17).”

Decision

NHS Improvement holds the information that you have requested and, subject to the redaction of material that falls within the exemptions set out below, has decided to release that material.

We have decided to withhold some of the information on the basis of the applicability of the exemptions in sections 31, 40 and 41 of the Freedom of Information Act 2000.

Background

The information we hold is held on the National Reporting and Learning System (NRLS). The primary purpose of the NRLS is to enable learning from patient safety incidents occurring in the NHS. The NRLS was established in late 2003 as a largely voluntary scheme

for reporting patient safety incidents, and therefore it does not provide the definitive number of patient safety incidents occurring in the NHS.

All NHS organisations in England and Wales have been able to report to the system since 2005. In April 2010, it became mandatory for NHS organisations to report all patient safety incidents which result in severe harm or death. All patient safety incident reports submitted to the NRLS categorised as resulting in severe harm or death are individually reviewed by clinicians to make sure that we learn as much as we can from these incidents, and, if appropriate, take action at a national level.

The NRLS is a dynamic reporting system, and the number of incidents reported as occurring at any point in time may increase as more incidents are reported. Experience in other industries has shown that as an organisation's reporting culture matures, staff become more likely to report incidents. Therefore, an increase in incident reporting should not be taken as an indication of worsening of patient safety, but rather as an increasing level of awareness of safety issues amongst healthcare professionals and a more open and transparent culture across the organisation.

Part 1 of your request

In total, 14 patient safety incidents were reported to the NRLS, where the incident was categorised as 'Documentation Incidents' and where the outcome was reported as death by the original reporter; and occurring between 1st April 2016 and 31st March 2017 (based on the date the incident was reported to have occurred) and exported to the NRLS on or before 3rd January 2018.

Table1. Breakdown of the 14 incidents categorised as *Documentation Incidents where the outcome was recorded as 'Death'*.

Cluster Name	Death
Acute (non-specialist Trust)	7
Mental Health	1
NHS Community Trust	1
Primary Care	5
Total	14

Part 2 of your request

In response to part 2 of your request, Annex 1 provides a summary of the 14 patient safety incidents reported as occurring between 1st April 2016 and 31st March 2017 where the incident was categorised as 'Documentation Incidents where the outcome was reported as death by the original reporter'.

Section 40 – Personal information

NHS Improvement considers that some information is exempt from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data and the first condition

under section 40(3)(a)(i) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) as the individuals concerned would have a reasonable expectation that their information would not be disclosed into the public domain. Section 40 is an absolute exemption and consideration of the public interest test in disclosure is not required.

Section 41 – Information provided in confidence

The exemption for personal information (i.e. section 40) only applies to living individuals. This means that the exemption cannot be used for information about, and which identifies, deceased individuals.

However, NHS Improvement considers that some of the information it holds is exempt from disclosure under section 41 of the FOI Act. 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 was obtained by NHS Improvement by third parties, in this case providers.

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.

NHS Improvement considers that disclosure of the information would amount to an actionable breach of confidence. Section 41 is an absolute exemption and does not require the application of the public interest test under section 2(2) of the FOI Act. However, 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 owed to the provider of the information.

Section 31 – Law enforcement

NHS Improvement considers that some of the information it holds is exempt from disclosure under section 31(1)(c) of the FOI Act.

Section 31(1)(c) states that:

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a).....
 - (b).....,
 - (c) the administration of justice.

In this case criminal prosecution is currently under consideration. NHS Improvement therefore considers that disclosure of details of the location, incident category and the description of 'death' would be likely to prejudice the administration of justice by law enforcement agencies.

Public interest test

Section 31 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemptions should be maintained. We have taken into consideration that it is important that the public have confidence in the public authorities responsible for enforcing the law. We have also considered there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust. However, in this instance we consider that there is a clear and powerful public interest in protecting the ability of public authorities to enforce the law.

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 can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, 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, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to nhsi.foi@nhs.net.

Publication

Please note that this letter and the attached information will shortly be published 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 the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,

NHS Improvement