

File reference	W18FOI148
Key words	Drug Related Staff Disciplines
Date of release	05/07/2018
Attachments	Yes

Freedom of Information Act Disclosure log - Reply Extract

You asked

- 1. How many of your clinical staff have been disciplined for misusing, misappropriating, distributing or possessing drugs – illegal or legal – since 1 January 2017, and how many lost their jobs**

Staff disciplined – Five or fewer staff

Staff who lost their jobs – Five or fewer staff

N.B. Please note that 'loss of job' has been taken to mean loss of an employee's current post. On some occasions an employee may have been removed from their current post, but redeployed into an alternative post, therefore maintaining their employment.

- 2. How many of your non-clinical staff have been disciplined for misusing, misappropriating, distributing or possessing drugs – illegal or legal – since 1 January 2017, and how many lost their jobs**

None

Please include locum or agency staff if you hold information on them.

Legal notes

University Hospitals Plymouth NHS Trust is confirming in accordance with section 1 (a) of the Act that it holds the information requested and is supplying it in accordance with section 1(b) unless otherwise specified.

Please find the answers to your questions noting that we have redacted the data set where numbers are five or fewer. This avoids a breach of the first two Data Protection Act principles. This is in accordance with section 40.-(2)(a) and (b) by virtue of section 40.-(3)(a)(i), the personal information exemption as described in the Freedom of Information Act. A detailed rationale is provided in the attached document L2.

Attachments included: Yes

Freedom of Information Rationales

Rationale for the use of Section 40 (2) (a) (b) and 3 (a) (i) & (ii) “Personal Information” exemption: Applied in accordance with the requirements of both the Data Protection 1998 and Freedom of Information Act 2000 concerning staff information

1a) Introduction

University Hospitals Plymouth NHS Trust (UHPT) takes the view that it is not just the name, it can be a host of other details that when collated identify a person and link them to events. A jigsaw puzzle is a good example of how single pieces might not mean anything but when the pieces are fitted together, a picture emerges. In the same way, the more information placed in the public domain the clearer the picture becomes. Normally this would be right and proper and provides the evidence that supports our accountability, however, where requested information relates to individuals and events the Trust has a duty to ensure that it finds the right balance between the rights of a data subject and the requirements of the Freedom of Information Act. This is particularly important when questions are very probing and an organisation has a duty of care. The Information Commissioner expresses these concerns in the legal guidance to the Data Protection Act stating:

“The Commissioner recognises that the aim of anonymisation is to provide better data protection. However, true anonymisation may be difficult to achieve in practice.

1b) Framework

Whether information is personal data will often be obvious. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

In considering whether the Trust should release the requested information into the public domain we considered whether its disclosure would be likely to breach any Data Protection principles and that it was not exempt from disclosure by virtue of section 10 DPA causing damage or distress. The Trust was also required to consider whether the disclosure of information to a member of the public would breach Data Protection principles if section 33 A (1) and other exemptions were disregarded despite FOIA requests being purpose blind.

1c) Our assessment of the impact of the release

1ca) Consideration of the first and second data protection principles

The Trust believes that placing the requested information in the public domain will provide information that is likely to enable the public to identify the individuals affected because it has some biographical significance for them and has them as the main focus of the release for which the Trust cannot be assured of the impact.

The processing of the data is not necessary for any employment purposes and is not in the vital interests of the data subject. The processing is not to the Trust's knowledge necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for obtaining legal advice or in any other way defending legal rights.

There are certain areas of law concerning the use of information and the relations of data controllers with individuals, which have particular relevance where breaches of the first and second principles are being considered.

These are:-

- (a) Confidentiality arising from the relationship of the data controller with the data subject.
- (b) The ultra vires rule and the rule relating to the excess of delegated powers, under which the data controller may only act within the limits of its legal powers.
- (c) Legitimate expectation, that is, the expectation of the individual as to how the data controller will use the information relating to him
- (d) Article 8 of the European Convention on Human Rights (the right to respect for private and family life, home and correspondence).

On this occasion, (a) (c) and (d) apply.

1cb) The third principle – “Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed”.

The Trust needs to gather a considerable amount of data about staff and they would not expect information of a personal nature to be made public.

The Trust believes it has a duty to ensure that where the request is purpose blind a balance is struck between the data subject's rights and that of an applicant in accordance with an individual's rights in accordance with section 1.-(1) (b) of the FOIA.

The Trust on this occasion believes that on balance the level of disclosure requested would have been excessive if it were to be disclosed and any disclosure would impinge on the rights of data subjects.

1cc) The sixth principle - “Personal data shall be processed in accordance with the rights of data subjects under this Act”.

In this case a right to object to processing that is likely to cause or is causing damage or distress by such disclosure.

1d) Summary for the application of Section 40 (2) (a) and (b) and (3) (a) (i) and (ii)

UPHT concludes that if the exempt data was released to the applicant without reference to the identity and reasons for the request, we would breach the first, second, third and sixth principles for the reasons offered.

1e) Outcome for personal information

UPHT on this occasion can confirm that it holds the information requested in accordance with section 1.- (1) – (a) of the FOIA, but is not communicating that information as required by section 1.(1) – (b) by virtue of section 40 (2) (a) (b) and 3 (a) (i) and (ii)

UPHT is issuing a refusal notice for these pieces of information in accordance with section 17.- (1). This is because the Trust considers the information personal and that the disclosure would breach data protection principles and cause distress and damage for the reasons offered.

Leaflet Governance

- Person responsible for review: Freedom of Information Manager
- Last reviewed 06/06/2018
- Next review due on 01/06/2020 or before if changes in the Acts or its guidance requires it.