

**Response issued under the Freedom of Information Act 2000**

Our Reference: CQC IAT 1617 0746

Date of Response: 24 March 2017

**Information Requested:**

***“1) When did CQC first become aware of the fraud allegations against Paula Vasco-Knight?***

***2) How did CQC become aware of the fraud allegations against Paula Vasco-Knight? What was the source, or sources, of information by which CQC became aware of the fraud allegations?***

***3) When did the CQC first learn that the police had decided to charge Paula Vasco-Knight with fraud?***

***4) When was first contact made between NHS Protect and the CQC about Paula Vasco-Knight’s case?***

***5) Please disclose all correspondence, with attachments, between NHS Protect and the CQC about the Paula Vasco-Knight case.***

***6) Please disclose all correspondence, with attachments, between NHS Improvement and the CQC about the Paula Vasco-Knight case.***

***7) Please disclose all correspondence, with attachments, between NHS England and the CQC about the fraud involving Paula Vasco-Knight.”***

The Information Rights 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 main obligation under the legislation is to confirm whether we do or do not hold the requested information.

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.

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

The statutory deadline for responding to an FOIA request is 20 working days from the date when CQC received the request therefore you should have received a response no later than close of business 1 March 2017. CQC recognises that failure to respond by that date is a breach of section 10 of FOIA.

Please accept our apologies for the delay in providing you with this response.

FOIA also recognises that there may be valid reasons for withholding information by setting out a number of 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.

We will now respond to each part of your request in turn.

***“1) When did CQC first become aware of the fraud allegations against Paula Vasco-Knight?”***

We do not hold a record of the exact date when CQC first became aware of the fraud allegations.

We can however confirm that a meeting took place on 28 April 2016 between David Behan, Chief Executive of CQC, Professor Sir Mike Richards, Chief Inspector of Hospitals, Ellen Armistead, Deputy Chief Inspector of Hospitals and Rebecca Lloyd-Jones, Director of Legal Services and Information Rights, where the fraud allegations were discussed.

***“2) How did CQC become aware of the fraud allegations against Paula Vasco-Knight? What was the source, or sources, of information by which CQC became aware of the fraud allegations?”***

We can confirm that we do not hold a record of how CQC became aware of these allegations.

***“3) When did the CQC first learn that the police had decided to charge Paula Vasco-Knight with fraud?”***

We can confirm that we do not hold this information.

***“4) When was first contact made between NHS Protect and the CQC about Paula Vasco-Knight’s case?”***

Please be advised that our procedures outline that we would suspend our regulatory processes in order to avoid prejudicing an ongoing investigation by NHS Protect. We can confirm that this was the case regarding Ms Vasco-Knight however, as indicated earlier in this response, we do not hold a record listing the date of first contact as requested.

***“5) Please disclose all correspondence, with attachments, between NHS Protect and the CQC about the Paula Vasco-Knight case.***

***6) Please disclose all correspondence, with attachments, between NHS Improvement and the CQC about the Paula Vasco-Knight case.***

***7) Please disclose all correspondence, with attachments, between NHS England and the CQC about the fraud involving Paula Vasco-Knight.”***

For part five, six and seven of your request please see the attached e-mail chains.

We have withheld the content of the e-mail of 3 May 2016 from disclosure.

We can advise that we consider this information to be exempt from the right to know under sections 36(2)(b) and (c) of FOIA.

Our explanation of this exemption is included further within this response.

The e-mail in question represents senior executives exchanging views about the investigations against Paula Vasco-Knight. The e-mail was intended to prompt discussion and learning from the allegations against Ms Vasco-Knight, and how this situation could be avoided in the future.

We can advise that in making our decision we have consulted with NHS Improvement to seek their views on disclosure of the information. This consultation was conducted in accordance with part IV of the code of practice issued under section 45 FOIA.

We have also made redactions to protect the personal data of a third party referenced in the communication together with names of junior employees and the direct contact details of individuals.

We consider the redacted information to be exempt from the right to know in accordance with section 40(2) of FOIA. Our explanation of this exemption is included further within this response.

### **Section 36 - Prejudice to effective conduct of public affairs**

We consider the exemption from the right to know provided at sections 36(2)(b) and (c) of FOIA to be engaged for the information contained within the e-mail of 3 May 2016.

This exemption allows a public authority to withhold information where:

***“in the reasonable opinion of a qualified person, disclosure of the information under this Act [...]***

***(b) would, or would be likely to, inhibit— .***

***(i) the free and frank provision of advice, or .***

***(ii) the free and frank exchange of views for the purposes of deliberation, or***

***(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”***

‘The qualified person’ for CQC is David Behan, our Chief Executive (this role was delegated to Mr Behan by the Secretary of State for Health in February 2013).

For this exemption to apply, Mr Behan must be of the reasonable opinion that disclosure would, or would be likely to, inhibit the factors in sub sections b (i) and/or (ii), and c.

Mr Behan has reviewed the information and expressed the opinion that disclosure of the information would inhibit the free and frank exchange of views for the purposes of deliberation; would be likely to prejudice the effective conduct of public affairs, and that the public interest to be served by withholding the information outweighs the public interest that would be served by disclosure.

In considering the balance of public interest, CQC is of the view that there is a strong public interest in maintaining the ability of CQC and NHS Improvement to have free and frank exchanges of views on matters relating to the regulation of the NHS, as this is a key part in shaping both CQC’s and NHS Improvement’s approach.

## **Section 40 – Personal information**

Section 40 of FOIA states:

### ***"40 Personal information***

***(1)Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.***

***(2)Any information to which a request for information relates is also exempt information if—***

***(a)it constitutes personal data which do not fall within subsection (1), and  
(b)either the first or the second condition below is satisfied.***

***(3)The first condition is—***

***(a)in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—***

***(i)any of the data protection principles, or  
(ii)section 10 of that Act (right to prevent processing likely to cause damage or distress), and***

***(b)in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.***

***(4)The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).”***

The individual(s) to whom the redacted information relates would have a reasonable expectation that a public authority such as CQC would not disclose information into the public domain in such a way as to make them identifiable. As such, disclosure into the public domain would be unfair and a breach of their rights under the Data Protection Act 1998.

The Data Protection Act 1998 regulates the use of "personal data" and the processing of that data. There are eight Data Protection principles which are listed within schedule 1 of the Data Protection Act 1998.

We believe that releasing the information could allow for the identification of individuals and therefore potentially be a breach of principles 1, 2 and 6.

The exemption provided at section 40(2) applies in any case where disclosure of the requested information into the public domain would be a breach of any of the principles of the Data Protection Act 1998. In particular, the first principle requires that disclosure of the information must be fair and lawful.

The purpose of the Data Protection Act 1998 is to protect people's private information and to ensure that it is handled properly.

We consider that it would be a breach of the principles of the Data Protection Act 1998 to disclose the information because in the interests of fairness the individuals in question would not expect us to share personal data, with the wider public under FOIA. To do so would be a breach of their privacy and rights.

No public interest test is required for this exemption.

### **Our approach to inspecting and regulating care services**

We have published information about how we inspect and regulate on our website:

[www.cqc.org.uk/content/how-we-inspect-and-regulate-guide-providers](http://www.cqc.org.uk/content/how-we-inspect-and-regulate-guide-providers)

Our inspection teams are formed from a national team of clinical and other experts, including people with experience of receiving care. Our inspections are in-depth and we inspect in the evenings and at weekends when we know people can experience poorer care.

Our inspectors use professional judgement, supported by objective measures and evidence, to assess services against our five key questions:

1. Are they safe?
2. Are they effective?
3. Are they caring?
4. Are they responsive to people's needs
5. Are they well-led?

We explain our approach in our provider handbook for NHS and independent acute hospitals:

[www.cqc.org.uk/content/hospitals-mental-health-and-community-health-services](http://www.cqc.org.uk/content/hospitals-mental-health-and-community-health-services)

Information about the fit and proper person regulation (regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014) is available within the handbook on page 44.

### **Regulation 5: Fit and proper persons: directors**

It may be helpful to clarify the role of CQC and providers with regards to regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

It is not directly CQC's role to receive referrals or assess whether directors are fit and proper persons. However, where we receive information of concern about whether a director is a fit and proper person we consider this in assessing whether the provider has met their responsibilities under the regulation.

The intention of the regulation is to ensure that people who have director-level responsibility for the quality and safety of care, and for meeting the fundamental standards, are fit and proper to carry out this important role. It applies to all providers that are not individuals or partnerships. Organisations retain full responsibility for appointing directors and board members (or their equivalents).

CQC may intervene where we have evidence that a provider has not met the requirement to appoint and have in place fit and proper directors, using the full range of our enforcement powers.

We have published information about this regulation on our website:

[www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors](http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors)

In specific you may find our guidance for NHS bodies useful:

[www.cqc.org.uk/sites/default/files/20150327\\_fppr\\_provider\\_guidance.pdf](http://www.cqc.org.uk/sites/default/files/20150327_fppr_provider_guidance.pdf)

The provider will have to ensure that it complies with the regulations by not having an unfit director in place. Ultimately, it is for providers to determine which individuals fall within the scope of the regulation, and for CQC to take a view on whether this has been done effectively.

CQC will check and monitor the extent to which the provider meets the regulation at the point of registration, if concerns are identified during an inspection, on receipt of concerning information and where there is a serious failure of a provider. For further information please refer to the guidance we have linked above. Specifically pages 13-15 include explanation of what we will do when we receive information of concern about the fitness of a director. The explanation makes reference to appendix C of the guidance which includes a flow chart which sets out the process we will follow.

The provider is responsible for the appointment, management and dismissal of its directors. The provider is responsible, as part of the recruitment and performance management processes, to ensure that the requirement is met. CQC will not undertake a fit and proper persons test of a director or determine what is serious mismanagement or misconduct, but we will examine how the provider has discharged its responsibility under the new regulation.

It is a breach of the regulation to have in place someone who does not satisfy the requirement.

CQC can take enforcement action for breaches of the fit and proper person requirement, in accordance with our Enforcement policy.

Where a breach is identified, we will use our existing regulatory powers.

Breaches of other regulations may give CQC cause to question whether they have resulted from a breach of this regulation.

### **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 how individuals can access official information:

[www.ico.org.uk/for-the-public/official-information](http://www.ico.org.uk/for-the-public/official-information)

### **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. To request a review please contact:

Information Rights  
Care Quality Commission  
Citygate

Gallowgate  
Newcastle upon Tyne  
NE1 4PA

E-mail: [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk)

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/content/contact-us](http://www.cqc.org.uk/content/contact-us)

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

The contact details are:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Telephone: 01625 545 745

Website: [www.ico.org.uk](http://www.ico.org.uk)