

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

**Our Reference:** CQC IAT 1718 0065

**Date of Response:** 30 May 2017

**Information Requested:**

***“1. Please disclose a copy of the report of CQC’s 2010 review of Heart of England NHS Foundation Trust, which is the subject of this CQC statement on 18 January 2010:***

***<http://www.cqc.org.uk/content/cqcs-review-heart-england-nhs-foundation-trust>***

***The report does not appear to be published, but if CQC has published it, please direct me to where it is published.”***

***Please advise since CQC's inception:***

***2. How many whistleblowing disclosures CQC has received from staff of Heart of England NHS Foundation Trust, the nature of the concerns raised and action taken by CQC in response to these whistleblowing disclosures”***

***3. How many complaints, from patients or families, the CQC has received about Heart of England NHS Foundation Trust, broken down by financial year”***

The Information Access 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.

In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold some recorded information in relation to this matter.

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

***“1. Please disclose a copy of the report of CQC’s 2010 review of Heart of England NHS Foundation Trust, which is the subject of this CQC statement on 18 January 2010:***

***<http://www.cqc.org.uk/content/cqcs-review-heart-england-nhs-foundation-trust>***

***The report does not appear to be published, but if CQC has published it, please direct me to where it is published.”***

The statement you refer to relates to a review into the governance and the safety of patients following a number of serious incidents that had occurred across the Heart of England NHS Foundation Trust.

CQC did not produce and publish a report following this review.

There is however information held in the form of a letter from CQC to the Heart of England NHS Foundation Trust dated 8 January 2010. The letter was sent to the Chief Executive of the Trust by the CQC Investigations Manager.

A copy of this letter is enclosed for your information.

Please note we have made redactions to protect identifiable information relating to an individual named on the first page of this correspondence. We are relying upon the exemption provided at section 41 of FOIA to protect this information.

We have also made redactions to protect the personal data of a CQC employee on page six of the correspondence. We are relying upon the exemption provided at section 40(2) of FOIA to protect this information.

Please refer to our detailed explanation of both of these exemptions further within this response.

Historically CQC and our predecessor, the Healthcare Commission, had an Investigations Team that would undertake investigations where appropriate in accordance with the Health and Social Care (Community Health and Standards) Act 2003. Section 52(1) of that Act empowered the Commission to conduct investigations into the provision of healthcare by or for an English NHS body.

Please refer to the National Archives website for further information about investigations:

***<http://webarchive.nationalarchives.gov.uk/20090327170515/http://healthcarecommission.org.uk/aboutus/whatwedo/investigatingmajorproblems.cfm>***

***“Please advise since CQC's inception:***

***2. How many whistleblowing disclosures CQC has received from staff of Heart of England NHS Foundation Trust, the nature of the concerns raised and action taken by CQC in response to these whistleblowing disclosures”***

CQC became fully operational on 1 April 2009 when it took over the activities of the Commission for Social Care Inspection (CSCI), the Healthcare Commission (HC) and the Mental Health Act Commission (MHAC).

Heart of England NHS Foundation Trust has 51 whistleblower enquiries recorded on our systems for the period 1 June 2011 to 4 May 2017.

Please note that whistleblower contacts only began to be recorded centrally on 1 June 2011. We can therefore only provide data from 1 June 2011 onwards.

The attached spreadsheet provides the general ‘gist’ of each of the concerns together with an explanation of what action CQC took in response to each concern, where that information is recorded in the relevant enquiry.

We have provided the general ‘gist’ as a summary to protect the confidentiality of the individual whistleblowers.

The data we are providing relates to the numbers of enquiries recorded as ‘whistleblowing’. This may not necessarily be reflective of individual contacts we may have received relating to whistleblowing and should not be used as an indicator of Trust performance in the way our published inspection reports and ratings are.

In many cases the Trusts are aware of the issues and where CQC substantiated any concerns during an inspection details of these can be found in our inspection reports.

The information for Heart of England NHS Foundation Trust (currently rated as ‘Requires improvement’) is here:

[www.cqc.org.uk/provider/RR1](http://www.cqc.org.uk/provider/RR1)

***“3. How many complaints, from patients or families, the CQC has received about Heart of England NHS Foundation Trust, broken down by financial year”***

CQC does not formally handle or investigate complaints about the care services we regulate. We do however receive information of concern that may relate to complaints that have been made directly to the care services.

Heart of England NHS Foundation Trust has 304 'information of concern' enquiries recorded on our systems for the period 1 April 2010 to 4 May 2017.

<b>Financial Year</b>	<b>Total</b>
2010-11	<b>14</b>
2011-12	<b>0</b>
2012-13	<b>21</b>
2013-14	<b>42</b>
2014-15	<b>79</b>
2015-16	<b>72</b>
2016-17	<b>69</b>
1 April 2017 - 4 May 2017	<b>7</b>
<b>Total</b>	<b>304</b>

## **Exemptions from the right to know**

### **Section 40 – Personal Information**

We consider the exemption from the right to know provided at section 40(2) of FOIA to be engaged for the redacted information on page six of the correspondence.

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 to whom the redacted information relates would have a reasonable expectation that a public authority such as CQC would not disclose this information into the public domain. 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.

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 redacted information because in the interests of fairness the individuals in question would not expect us to share this information, 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.

## **Section 41 – Information provided in confidence**

We consider the redacted information on page one 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—***

***(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.”***

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 advises that we “*treat information we receive from the public, professionals and others as confidential*”.

[www.cqc.org.uk/content/privacy-statement](http://www.cqc.org.uk/content/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.

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.

This guidance is "[Awareness guidance 2 – Information provided in confidence](#)" and is available to view or download from the ICO website:

[www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/refusing\\_a\\_request](http://www.ico.org.uk/for_organisations/freedom_of_information/guide/refusing_a_request)

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 without their consent.

### **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?

### **Contact recorded on our CRM system**

Contact from the people who interact with us (members of the public, professionals, providers, whistle blowers, for instance) is recorded on our Customer Relationship Management (CRM) system. Contact (in the form of e-mail or hard copy correspondence and telephone calls) is recorded in individual enquiries contained within the CRM system.

Information of concern is currently logged by CQC in three different ways:

1. As an information of concern enquiry

2. As a safeguarding enquiry
3. As a whistleblowing enquiry

## **Whistleblowing**

Whistleblowing is the term generally used when someone who works for an employer raises a concern externally or outside of their normal management chain. These concerns may be about malpractice, risk (for example about patient safety), wrongdoing or possible illegality, which harms, or creates a risk of harm, to people who use the service, colleagues or the wider public.

A 'whistleblower' may also be someone who has left their job after they have made a disclosure and is raising it again, perhaps because they remain concerned about vulnerable people or wrongdoing and are not confident the management have dealt with it. Or they may also be someone who provides services for, a provider who is registered with CQC.

Examples of a worker who provides services to a registered provider include, but are not limited to, agency staff, visiting community health staff, GPs, independent activities organisers, contractors.

CQC has published information about whistleblowing on our website:

[www.cqc.org.uk/content/report-concern-if-you-are-member-staff](http://www.cqc.org.uk/content/report-concern-if-you-are-member-staff)

There is a "[Quick guide for health and social care staff about whistleblowing](#)" and "[Guidance for providers](#)" which contain additional information about whistleblowing which you may find useful.

All providers of health and adult social care that we regulate must have a clear process for staff to raise any issues with their employer.

CQC is however contacted by people who wish to share information about the care services they work in. Where these individuals are raising concerns they believe are in the public interest and fall into one or more of the six whistleblowing categories (listed below), we classify the individual as a whistleblower.

Any whistleblowing information received by CQC that also relates to an allegation of abuse or neglect is managed through our safeguarding processes. Not all whistleblowing information directly relates to the quality of care being provided (for example, some issues raised with us may relate to other matters such as employment law).



## **The Freedom of Information Act 2000**

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.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

Public authorities spend money collected from taxpayers, and make decisions that can significantly affect many people's lives. Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive.

The main principle behind FOIA is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

A disclosure under FOIA is described as "applicant blind" meaning that it is a disclosure into the public domain, not to any one individual.

This means that everyone has a right to access official information. Disclosure should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by FOIA.

An applicant does not need to give a reason for wanting the information. On the contrary, the public authority must justify refusing the information.

Public authorities are required to treat all requests equally, except under some limited circumstances. The information someone can access under FOIA should not be affected by who they are, whether they are journalists, local residents, public authority employees, or foreign researchers.

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.

## **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 Access  
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)