

FREEDOM OF INFORMATION REQUEST

RF23-677

Request:

Excluding reports relating to incidents of self-harming behaviour, disruptive/aggressive behaviour and patient abuse. Please provide me with the most the five most recent 'serious incident reports' (or 'patient safety incident reports' or 'root cause analysis investigation reports') relating to incidents which have occurred in the following departments:

- breast surgery
- gastroenterology
- interventional radiology
- neurorehab
- paediatrics
- respiratory
- trauma and orthopaedics

Response:

We can confirm East Kent Hospitals University NHS Foundation Trust (EKHUFT) holds the information you have requested.

However, EKHUFT declines to provide copies of the reports as we consider that disclosing the information contained within them would breach data protection law, in particular Article 5(1)(a) of the UK GDPR which states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

Of the 35 serious incident reports requested (i.e. five for each of seven departments), 29 relate to living individuals. These reports describe incidents in detail and include information about the patients' medical history which is taken from their medical records. Information about a person's health or medical treatment history is special category personal data and under data protection law this should only be shared where there is a legitimate interest.

Although you have not stated what your interest is in the serious incident reports, we acknowledge that there is public interest in understanding how the Trust investigates and learns from incidents. There may be other legitimate interests in the investigations of the most recent incidents, as per the request, which can only be met by disclosure of the information requested. However, we must consider the impact that disclosure would have on the patients, and their families, who would not reasonably expect the information to be shared. We consider that disclosure of the information would cause distress to the patients and staff, given that the information concerning the serious incidents are not in the public domain and that individuals could be identified from the disclosure and would therefore be in breach of the first principle of the DPA. On balance we conclude that disclosure would not be fair to the individuals whose personal information is contained within the reports and that their right to privacy outweighs any legitimate interest in disclosure. As such section 40(2) FOIA is engaged and the requested reports are exempt from disclosure.

In addition to the third-party personal information about patients, the reports contain personal information about staff who were involved in either the care of the patients or the investigations of the incidents. Information about them and any statements made that are directly attributable to them is

considered personal information and section 40(2) is engaged for these parts, for the same reasons stated above.

The remaining six (6) reports relate to deceased individuals. Whilst section 40 FOIA does not apply to the deceased, the reports contain personal information about staff who were involved in either the care of the patients or the investigations of the incidents and section 40(2) is engaged for these parts (as above).

Further, the requested reports contain information that has been drawn from the deceased patients' medical records, or from interviews with the health professionals involved in their medical care and treatment. Whilst the information is not the actual medical records, the Trust believes that is of the same sensitivity and relevance to the deceased persons as their medical records, and we maintain our duty of confidence to the individuals or to their representatives.

Section 41 FOIA (information provided in confidence) provides that information is exempt if it was obtained by a public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person. Medical information that is not in the public domain has the necessary quality of confidence i.e. that it was given by the patient to the people providing treatment and care to them prior to their death with the expectation that it would not be publicly shared, and the Trust does not believe there is a significant public interest that would override our duty of confidentiality. We therefore rely on section 41 FOIA in refusing to disclose the requested serious incident reports where the patients sadly died.

(DATE OF RESPONSE: 17 NOVEMBER 2023)