



**Wrightington,
Wigan and Leigh**
NHS Foundation Trust

Information Governance

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Date Received: 19th Apr 2017
Response Due: 23rd May 2017

23rd May 2017

Dear

INFORMATION REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

We are now pleased to respond to your request for information under the FOI Act.

You asked:

Under the Freedom of Information Act 2000 I seek the following information, broken down by calendar year since January 2012 up until the most recently available data:

1. *Number of cases of staff gross misconduct.*
2. *Number of cases of staff gross misconduct broken down by action taken (e.g. disciplinary action, investigation, suspension with pay, dismissal)*
3. *If possible, the number of cases of gross misconduct broken down by type of staff (e.g. nurse)*

Prior to 2017 the disciplinary type (i.e. misconduct/gross misconduct etc) was not centrally recorded.

There is currently one disciplinary case open.

Refusal Notice: S40. Personal Information.

Personal data of a third party is exempt under section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles. The Trust believes that to release this data would be in contravention of the first data protection principle. The first principle requires personal information to be:

- processed 'fairly'
- processed 'lawfully'

and not processed at all unless one of the 'conditions' for fair processing is met.

To release this data would not be 'fair' processing as there is a legitimate expectation by a third party (our employees) that this information would remain confidential. Also, the Trust must consider the effect which disclosure could have on the data subject - would the disclosure cause unnecessary or unjustified distress or

damage to the person who the information is about? Releasing the data you have requested could bring the person unwanted attention and thus cause unjustified distress.

Section 40 is subject to the Public Interest Test.

A distinction can be drawn between information that relates to the private and public lives of a third party when considering whether disclosure would be fair. A disclosure would also be unlawful if it would place the organisation disclosing the information in breach of the Human Rights Act 1998.

It is unlawful under section 6 of the Human Rights Act for any public authority to act incompatibility with rights drawn from the European Convention on Human Rights. These include a person's right to respect for their private and family life (Article 8):

Right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Trust believes that information which is intrinsically private such as information about the home or family life of an individual, his or her personal finances, would be unfair to disclose and further that we may be in breach of article 8 of the Human Rights Act 1998 if we disclose.

Generally speaking, the more private the information, the greater the weight which will attach to the public interest in maintaining the exemption from the Freedom of Information Act for the purpose of the public interest test.

The Trust believes that any additional disclosure would result in the individual being identifiable and therefore breach Section 40 of the FOI act.

I trust that this information is helpful to you, however if you are not entirely satisfied with this response please do not hesitate to contact the Information Governance Department on 01257 488271. If we do not hear from you within 28 days we will assume that we have been able to accommodate your request under the Freedom of Information Act 2000.

Yours sincerely,



Andrew Foster
Chief Executive

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If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to: Information Governance Department, Wrightington, Wigan and Leigh NHS Foundation Trust, Wrightington Hospital, Hall Lane, Appley Bridge, Wigan, WN6 9EP

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally the ICO cannot make a decision unless you have exhausted the complaints procedure at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF