

Trust Headquarters
Russells Hall Hospital
Dudley
West Midlands
DY1 2HQ

Date: 30/10/2012

FREEDOM OF INFORMATION ACT 2000 - Ref: FOI/011256

With reference to your FOI request that was received on 03/10/2012 in connection with 'Serious Untoward Incident'.

Your request for information has now been considered and the information requested is enclosed.

Further information about your rights is also available from the Information Commissioner at:

Information Commissioner

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 0303 123 1113
Fax: 01625 524510
www.ico.gov.uk

Yours sincerely

Information Governance Manager
Room 34a, First Floor, Esk House, Russells Hall Hospital, Dudley, DY1 2HQ
Email: FOI@dgh.nhs.uk

Thank you for your email request of 03 October 2012 received on 03 October where you requested information about an alleged incident at Russells Hall Hospital and a Serious Untoward Incident (SUI) report to the Human Tissue Authority on or around 02 April 2012.

This request for information is being handled under the Freedom of Information Act 2000 (the Act).

I understand that Russells Hall Hospital made a Serious Untoward Incident (SUI) report to the Human Tissue Authority on or around 02/04/2012 regarding the release of the wrong body by its mortuary.

I also understand that the hospital launched its own investigation into the incident. I would like to request:

1. A copy of the SUI report.
2. A copy of the summary of the hospital's investigation report.
3. A copy of the findings of the hospital's investigation report.
4. A copy of the recommendations of the hospital's investigation report.
5. A full copy of the hospital's investigation report.

I can confirm that The Dudley Group of Hospitals NHS Foundation Trust hold this information, however, this information is exempt from disclosure under section 41 of the Act on the basis that the information contained within the documents requested is highly sensitive, has the necessary quality of confidence, has been provided to the Trust by third parties in confidence, and in circumstances importing an obligation of confidence. As such the disclosure of that information to the public (including yourself) by the Trust and/or its unauthorised use (including publication of that information by a journalist) would constitute, and give rise to, an actionable breach of confidence, both in respect of those involved as part of the Trust's investigation, and the personal representatives of the deceased/s.

Not only does the Trust's duty of confidentiality extend to those parties identified above, but in addition it has also been confirmed by the Information Tribunal that the duty of confidentiality continues after the death of an individual to whom that duty is owed: *Mrs P Black v The Information Commissioner and Epsom and St Helier NHS Hospital Trust*, 17 September 2007, EA/2006/0090.

This case concerned a referral to the Information Commissioner after the Trust declined to provide information surrounding an investigation following the receipt of a request made under the Act on the grounds that the information was exempt from disclosure under s.41. The complainant sought to rely upon the argument that disclosure of the information requested was in the public interest, which outweighed the Trust's duty of confidentiality. The items that were requested included: witness statements taken by an investigation officer, meeting minutes held with contributors to the investigation (including clinicians) about the investigation; and the Trust's final report.

While the Trust acknowledges that s.41 attracts an absolute exemption under section 2(3)(g) of the Act, (meaning that any information falling within the ambit of that section is not disclosable, and there is no requirement to give consideration to whether there is an overriding public interest in disclosing that information), the Trust confirm that they have still considered whether or not the disclosure of the information requested (in the public interest), would outweigh their duty of confidentiality.

In arriving at their decision, the Trust has considered their duty not only to the deceased/s, their personal representatives, and the families of the deceased/s, but also their duty to the participants in the investigation. In this regard, the Trust refers you to the comments and decision made by the Information Commissioner in the case of *Black*:

"In the circumstances of the current case, the inhibition to frank disclosure to an investigator is arguably greater, because there may be circumstances where such disclosure would be to the confider's detriment, for example in the apportioning of blame or criticism. This makes the argument for holding such disclosures confidential all the stronger, so that any sanctions which may arise can be undertaken appropriately, in a controlled environment, rather than through 'trial by media'. Thus a professional may be more prepared to disclose damaging evidence about his conduct, and accept appropriate penalties within his profession, than he would be if that evidence were likely to reach the wider community and result in disproportionate public or media condemnation.

Consequently, while the Commissioner acknowledges the absolute nature of the confidence ... he finds that the confidence due to a participant in an investigation of any misadventure ought also to be taken very seriously. For this reason, he is guided by the ... principle that ... the public interest in maintaining the confidence outweighs, by some

way, the countervailing interest in disclosure.

Having carefully considered the complainant's and the public authority's arguments, the Commissioner finds that section 41 of the Act is engaged ... and consequently the information has been correctly withheld under section 41 of the Act."

The Trust consider that the case of Black applies, and would seek to rely upon it should any challenge be made to their decision not to disclose the information requested. While the public's interest is always central to what any NHS Foundation Trust seek to achieve, including The Dudley Group of Hospitals NHS Foundation Trust, in the treatment of their patients and in their dealings with the general public, on this occasion, the disclosure of the information would undermine the equally paramount principle of confidentiality