

Our ref: DE00000397016

1 April 2009

Dear Mr Walsh

Thank you for your letter which we received on 10 February, asking, under the Freedom of Information (FOI) Act, for a copy of the clinical audit of the Gosport War Memorial Hospital, commissioned in September 2002 by the Chief Medical Officer Sir Liam Donaldson and conducted by Professor Richard Baker from the Clinical Governance Research and Development Unit at the University of Leicester. I apologise for the delay in responding.

I can confirm that the Department holds information falling within the terms of your request. However, I have to advise you that this is being withheld under Section 40(2) and 40(3)(a)(i) of the FOI Act. These sections exempt from the general duty to disclose, any information constituting personal data relating to a person other than the requestor, and whose release would contravene any of the Data Protection Principles set out in the Data Protection Act.

It may be helpful if I outline our considerations relating to your FOI request. The report from Professor Baker is not yet in the public domain, and we have to balance the legitimate public interest in openness, against the rights of individuals named within the report, in respect of personal details relating to them. We consider that there is a legitimate public interest in protecting their rights, at the present time, for those facts not to be disclosed - or at least for them to have a full opportunity to read the report and make their own comments upon it. Performing that assessment, and taking all the FOI and Data Protection Act issues into account, we have concluded that on balance we should not yet issue it.

However, recognising the public interest in this whole issue, we do intend, once the inquests are concluded, and the GMC has decided what its action will be, and subject to the appropriate individuals identified in the report having had a chance to comment, to publish the Baker report, should publication still be relevant - that is to say, it may in the meantime become public knowledge from another official source, such as the proceedings of an inquest. I should add that this intent to publish the report would also be likely to bring a request for it, in the intervening period, within the remit of S22 of the FOI Act, which relates to information destined for publication.

I am sorry to be unable to be more helpful at the present time. If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Section Head
Freedom of Information Unit
Department of Health
Room 317
Richmond House
79 Whitehall
London SW1A 2NS

Email: freedomofinformation@dh.gsi.gov.uk

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 provided by the Department. The Information Commissioner can be contacted at:

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

Please contact me if you have any queries about this letter.

Yours sincerely,
Colin McDonald
FOI Manager
Department of Health Customer Service Centre