

Information Governance

Robert Dolan House
9 Alie Street
London
E1 8DE

Email elft.foi@nhs.net

Website: <https://www.elft.nhs.uk>

28 March 2023

Our reference: FOI DA4589

I am responding to your request for information received 13 February 2023. I am sorry for the delay in responding to your request. This has been treated as a request under the Freedom of Information Act 2000.

I am now enclosing a response which is attached to the end of this letter. Please do not hesitate to contact me on the contact details above if you have any further queries.

Yours sincerely,



Keshia Harvey
Information Governance Manager

If you are dissatisfied with the Trust's response to your FOIA request then you should contact us and we will arrange for an internal review of this decision.

If you remain dissatisfied with the decision following our response to your complaint, you may write to the Information Commissioner for a decision under Section 50 of the Freedom of Information Act 2000. The Information Commissioner can be contacted at:

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

Tel: 0303 123 1113
Web: www.ico.org.uk

Please note that the data supplied is not allowed to be re-used and/or published without the explicit consent of East London NHS Foundation Trust. Please contact the signatory to request permission if this is your intention



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Request:

Question 1: How many members of your workforce (both staff and volunteers) require a DBS check?

Answer: 10,079 - all Trust staff are required to have a DBS check.

Question 2: How many members of your workforce (both staff and volunteers) who require a DBS check have not been DBS checked for 3 years?

Answer: The Trust has reviewed question 2 of your request for information under the Freedom of Information Act (FOI) 2000.

Section 1(1) of the Freedom of Information Act 2000 states:

*Any person making a request for information to a public authority is entitled—
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to them.*

East London NHS Foundation Trust re-checks DBS every five years and therefore does not record the information requested and is unable to provide a response.

Question 3: How many members of your workforce (both staff and volunteers) who require a DBS check have never been DBS checked.

Answer: Zero.

Question 4: In the past ten years how many members of your workforce have been found guilty of sexual misconduct at a misconduct hearing?

Answer: The Trust has reviewed question 4 of your request for information under the Freedom of Information Act (FOI) 2000.

Over the past five years for which data is available there have been seven cases upheld or partially upheld at a misconduct hearing of sexual misconduct. By way of advice and assistance (and in line with our duty under s. 16 of the FOI Act), the Trust does not use 'sexual misconduct' in and of itself as a category of misconduct for the purposes of its disciplinary policy. In determining what constitutes 'sexual misconduct' for the purposes of its response to this request, we have included cases of sexual harassment, verbal as well as physical and sex discrimination.

By way of further advice and assistance, we have previously provided a response to a similar recent FOI request here:

<https://www.elft.nhs.uk/sites/default/files/2023-02/ANON%20Response%20-%20FOI%20DA4556.pdf>

Question 5: Of those, how many were referred to the DBS?

Answer: Zero members have been referred to the DBS as at the date of this response.



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Question 6. In instances where a member of your workforce was found guilty of sexual misconduct at a misconduct hearing, but not referred by the Trust to the DBS, please share a summary of the allegation they were found guilty of.

Answer: The Trust has reviewed question 6 of your request for information under the Freedom of Information Act (FOI) 2000 and has concluded that:

- (1) It does not hold information which answers your request (in the sense that it does not already hold a summary of each allegation). Creating a summary would fall under the category of 'creating new information' which public authorities have no obligation to do in order to respond to a FOI Act request.

- (2) If it is wrong about point (1) above, the specific information you have requested/which would be included in any summary would result in information being disclosed 'to the world' under the FOI Act that is unique enough to run the risk of re-identification of the individuals involved (including the victim of the misconduct, as well as the perpetrator). Consequently, as the information included in a summary could be an identifier, it would be considered personal data for the purposes of the FOI Act and the UK GDPR (data protection law). Personal data is exempt from disclosure under s. 40(2) of the FOI Act where the disclosure would contravene any of the data protection principles set out in the UK GDPR.

In light of all the circumstances, the Trust has concluded that it would not be fair, may not be lawful, and is not necessary to disclose this information under FOI Act, because of:

- the sensitive nature of the allegations (which may amount to 'special category data' under the UK GDPR: the Information Commissioner's view is that it will almost never be fair to disclose such information under the FOI Act);
- duties of confidentiality owed to the victims of the inappropriate behaviour;
- the fact that disclosure is 'to the world' and the Trust will not be able to limit who sees this information and cannot be certain what information they already are aware of/also hold from other sources; and
- the Trust's processes themselves provide a formal route for those processes to be explored and concluded, hence it is not 'necessary' to disclose this information under FOIA, particularly as numerical data about the number of cases (from which individual cases cannot be identified) has been disclosed in response to other parts of your request.

Providing the information about individual cases under question 6 of your request therefore would contravene the first data protection principle (set out Article 5(1)(a) UK GDPR).

In making this decision, the Trust has taken account of the fact that it is a relatively small organisation and works in a defined geographical area, and accordingly, it is possible that, for instance, its staff members could identify themselves or one another, even from relatively limited summary information (and it will be difficult for the Trust to be able to determine exactly what form of words is suitable to pose no risk of re-identification). Some of the allegations are very fact/circumstance-specific. This makes them particularly difficult to anonymise. Furthermore, putting this kind of information into the public domain may, in the circumstances, not only identify cases (and individuals)



where allegations have been upheld, but indeed also confirm where allegations have not been upheld or otherwise not taken forward in other cases.

Section 40 is an 'absolute' exemption and therefore it is not necessary to consider any public interest factors for and against disclosure, in determining whether or not this information would be exempt under FOIA.



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