Ref: CORP 2021 - 031 Date: 29.04.2021

Dear \*\*\*\*

**Request under Freedom of Information Act 2000**

Thank you for your request for information, as detailed below, which we received on 04/03/2021.

***Your Request;***

*Can you please release the email correspondence between Velindre University NHS Trust and board member Martin Veale between July 1, 2020 and October 1, 2020 where Drag Queen Story Hour UK, Drag Queen storytelling or Seb Samuel is mentioned?*

***Velindre University NHS Trust response is shown below;***

Velindre University NHS Trust [herein referred to as the Trust] can confirm it holds relevant information in relation to your request. With respect to the Trust response, and where information applicable to your request is held, the Trust is refusing disclosure of the information.

In doing so the Trust is relying on the following exemptions under the Freedom of Information Act 2000 (FOIA) to withhold the information from disclosure.

* Section 36(2)
* Section 38(1)
* Section 40(2)

The Trust considers that the requested information is exempt from disclosure under these exemptions. Where applicable, the Trust has also considered the public interest issues which arise from this request and has concluded that the public interest is better served by application of the relevant exemptions and withholding the respective information from public access. This further translates across in the detail provided below, and ensures the Trust meets its obligations under Section 17 of FOIA when refusing a request for information.

**Section 36 - Prejudice to the effective conduct of public affairs**

Section 36 of the FOIA provides that: -

*“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-*

*(2)(b) would, or would be likely to, inhibit-*

*i. the free and frank provision of advice, or*

*ii. the free and frank exchange of views for the purposes of deliberation, or*

*(2)(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”*

In accordance with the FOIA, the section 36 exemption can only be considered if, in the reasonable opinion of the public authority’s qualified person agrees that the exemption is engaged. For the Trust, the 'qualified person' is the Chief Executive. I can confirm that the Chief Executive has considered the request and, in his opinion, disclosure of the information held by the Trust would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.

Following the required consultation with our qualified person, the Trust have concluded that the section 36(2) exemption is engaged. In our considered opinion the release of the requested information would inhibit the ability of Trust officials, and its partners, to express views and deliberate issues. In our view, this would likely impair the quality of decision making and therefore prejudice the effective conduct of public affairs.

Within the Information Commissioner’s Office guidance on the public interest test, which all qualified exemptions such as this are subject to, it states that to apply these exemptions you must first prove that the exemption is engaged. For those exemptions which are prejudice based (i.e. section 36) we must carry out a prejudice test. The prejudice test is to determine if the prejudice exists in relation to exemption engaged and assesses the likelihood that harm will occur on release of the material requested. Through conducting this test an authority should be able to indicate whether it is the lower threshold of ‘would be likely to cause prejudice’ or higher threshold of ‘would cause prejudice’.

The test is outlined in detail by the Information Commissioner’s Office within their prejudice test guidance. For section 36 this includes consideration of the likelihood of harm to an authority’s ability to offer an effective public service or to meet its wider objectives, through its working practices, processes and also relationships with stakeholders. In this instance we are referring to our ability as an organisation to ensure Trust officials and our partners have the ability to provide free and frank views for deliberations.

In this instance we have determined that the prejudice does exist; as there is a link between the release of the requested information and the need for ensuring Trust officials and our partners have the ability to exchange views for the purpose of deliberations free from any potential external scrutiny. Releasing information which would or would likely have a disruptive effect on the operations of the Trust would or would likely affect our conduct as a public body i.e. our capability to ensure Trust officials and our partners can express views and deliberate issues effectively, which is necessary in order to ensure effective decision-making.

Section 36 is subject to the Public Interest Test, about which we explain further below.

**Section 38 – Health and Safety**

Section 38 applies to information that if disclosed would be likely to put the physical or mental health or the safety of any individual at risk or greater risk. The exemption can apply equally to a group or class of people who could have their health and safety adversely affected by disclosure. The exemption identifies two separate, but related risks associated with disclosure. Those likely to:

* endanger the physical or mental health of any individual
* endanger the safety of any individual

In accordance with the FOIA, and in reviewing the information you have requested, the Trust have concluded that Section 38(1) exemption is engaged. In our considered opinion the disclosure of the requested information, in this instance we are referring to the release of names of Trust officials and our partners, and if this were to be combined with other information which may already be available in the public domain. Increases the risks of individuals being approached, in person or via the means of other mediums.

In our view there is therefore a reasonable threat to the safety of individuals, thus release of the information requested would likely endanger the safety of our staff and partners with whom we are engaged with.

Section 38 is subject to the Public Interest Test, about which we explain further below.

**Public Interest Test**

Both Sections 36 and 38 are qualified exemptions, and whilst the Trust is of the opinion that both exemptions are engaged, this is not sufficient for us to withhold the information. As we must also establish that the public interest lies in maintaining the exemptions. In carrying out the public interest test, our findings are set out below.

**Arguments for disclosing the information:**

* Disclosure of information held by public authorities on request is in itself of value and in the public interest so as to promote openness, transparency and accountability in relation to the activities of public authorities. This is particularly the case for an issue that has been the subject of public debate.
* There is a clear public interest in demonstrating that the work of the parties is effective in the deliberation, and that disclosure would improve public confidence in the integrity on how decisions are made.

**Arguments for withholding the information:**

* There is a public interest in the Trust and its partners being able to provide advice and have free and frank deliberations to ensure effective decision-making is in place.
* A move away from Trust officials and its partners having the ability to provide views free from external scrutiny could adversely affect officials and partners’ willingness to serve. This could weaken the breadth of knowledge and experiences available to the Trust, and affect recruitment of future officials and partners. This in turn could harm the Trusts ability to offer an effective public service.
* Release of the request information would be likely to endanger the safety of our staff and those with whom the Trust have engaged with.

Considering the arguments outlined above, the Trust has concluded that the public interest favours maintaining both exemptions in this case, and that the information remains to be withheld.

**Section 40 – Personal Information**

In reviewing the information you have requested, the Trust have noted some of the correspondences contain information which is exempt by virtue of the fact that it is personal data.

Section 40(2) FOIA provides that information is exempt if its disclosure would breach any of the data protection law principles. Insofar as the documents contain information relating to identifiable staff members and others, it is for these reasons that the Trust considers information contained within the associated material meets the definition of personal data under the respective UK Data Protection Law. It would be a breach of such law for the data which is subject of this request to be released generally into the public domain. This is because disclosure of this personal data is not necessary in the public interest and, further, it would be unfair to the individuals concerned, who could have no expectation that relevant information relating to them would be made public.

Section 40(2) of FOIA therefore applies as the release of the information to the public at large and in response to this request would be contrary to data protection law principles to disclose this information.

This is an absolute exemption and so no public interest test applies.

I trust this answers your request for information, however, should you not be satisfied with the information supplied or the process of supplying it, you have a right to complain and request a review. You should forward your complaint to:-

Mr Stuart Morris

Assistant Director of Informatics

Velindre University NHS Trust

2, Charnwood Court

Heol Billingsley

Parc Nantgarw

Cardiff / Caerdydd

CF15 7QZ

Tel / Ffon - 029 20196161

Should you wish to take your complaint further, if you are still unhappy with the decision after review, you can contact the:-

Information Commissioner's Office - Wales

2nd Floor,

Churchill House,

Churchill Way,

Cardiff,

CF10 2HH

Telephone: 029 2067 8400

fax: 029 2067 8399

email: [wales@ico.gsi.gov.uk](mailto:wales@ico.gsi.gov.uk)

Yours sincerely

Julie Mann

Communication and Compliance officer

Velindre University NHS Trust

2 Charnwood Court

Heol Billingsley

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