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2nd October 2019

Mr Patrick Cowling
BBC
Via email to: FOI.Research@bbc.co.uk

Dear Mr Cowling

Our reference: 19-20065

Response to internal review of request under the Freedom of Information Act 2000

1. Background

- 1.1 I write to set out the outcome of your request for an internal review of the decision of Tavistock and Portman NHS Foundation Trust (the "Trust") regarding your request under the Freedom of Information Act 2000 (the "Act") dated 23 May 2019.
- 1.2 The Trust responded to your request on 04 July 2019.
- 1.3 On 24 July 2019 you requested an internal review of the Trust's decision to withhold all the information requested. You asked the reviewer to consider in particular: whether the balance of public interest between exemption and disclosure has been properly applied; and whether some of the information could be released even if other information is withheld.

2. The Trust's response – outcome of the internal review

- 2.1 I have carried out the internal review on behalf of the Trust. I can confirm that I have not had any involvement with the consideration of your request prior to conducting this internal review.
- 2.2 The Trust confirms that it holds a report (the Report) prepared by the Trust's previous Medical Director, David Taylor.

- 2.3 Having reconsidered your request and the framework under the Act, I can confirm that the Trust considers that the requested information is exempt under sections 36 and on further consideration the Trust believes that sections 31 and 38 of the Act also apply to the Report.
- 2.4 I set out below, in fuller detail, why the Report is exempt under the Act.

3. *Section 36*

- 3.1 The Trust's Chief Executive has reached the reasonable opinion that disclosure of the redacted sections of the Report would or would be likely to prejudice the effective conduct of public affairs and as such section 36(2)(c) applies.
- 3.2 The Trust has a function of ensuring that services are provided in a manner in which the general public can have confidence. Whilst the Report requested is some 15 years old, it contains content which describes a range of viewpoints about the clinical conceptualisation and treatment methods for gender dysphoria. Having reviewed those viewpoints it is clear that as time has progressed thought and service delivery in this area has changed and as such this historic information would likely present an inaccurate representation of the types of services the Trust delivers in the current day. We have considered whether this negative impact could be mitigated by providing additional contextual material. We do not believe that it could, given the febrile nature of the ongoing debate around these services.
- 3.3 Secondly, the Trust has been the subject of a high level of media interest about its gender identity development service, to which the Report relates. This media attention has been variable but contentious to an extent where the organisation has seen the presentation of patients who are distressed and questioning of the care and treatment delivered by the service. This, too, applies to the patient's carers. It is the Chief Executive's reasonable belief that disclosure of this Report, if used in national media could exacerbate this current position of distress and damage our patients' mental health.
- 3.4 Thirdly, and specifically about the Report handles information about the medications which are currently offered. This is an area where there is current information available about the drugs usage via the Trust's public website. Through the national media interest, described

in paragraph 3.3, the Trust has received anxious phone calls from members of the public and those not receiving clinical services from the Trust about the drug, specifically, that their children are being prescribed one of the drugs for an alternative, appropriate, clinical purpose. Disclosing out of date information about the way in which drugs have been prescribed in the past, is likely to generate unnecessary and unwarranted distress for patients and other members of the public, regarding their own drug prescriptions. We know that this is likely to happen, because it has already happened in response to press coverage of drug prescriptions. Accurate information is available through the Trust's website.

4. *Section 31 and 38*

4.1 The Trust considers that disclosure of the Report would or would be likely to:

4.1.1 prejudice the exercise of its functions for the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with actions of persons at work and therefore sections 31(1)(g) and 31(2)(j) apply; and,

4.1.2 endanger the physical or mental health of any individual and therefore section 38(1)(a) applies.

4.2 The Trust has a function of ensuring that services are provided in a manner which protects patients against risks to their health and safety, including their mental health, which arise out of or in connection with the services it provides. The Trust considers this is a necessary part of its statutory function of providing NHS services to the public.

4.3 The Trust considers that disclosure of the Report and subsequent media interest would or would be likely to prejudice its ability to exercise the above functions. This is because the viewpoints are from a point in time and clinical practice in this area has continued to develop and for which there is extensive material available by the means of information provided on the Trust's public website and also from recent media responses to articles and televised broadcasts which have focused on the services provided. The Trust considers

that vulnerable service users would be at risk of harm as a result of reading the Report, which contain out of date information which may not correspond with current and up to date available material.

5. ***The public interest test***

- 5.1 You have asked us to consider the public interest test and more specifically the benefits of releasing the Report. The Trust believes that there is a public interest in the subject area of gender dysphoria and while it is recognised that there is some benefit from transparency in understanding of historic practices we do not believe that this factor alone outweighs the potential harm that disclosure is likely to cause. There is a greater public interest in the protection of the health and safety of our patients, and in patients and other members of the public having access to up to date and accurate information, which is not undermined by material which is now out of date and inaccurate.
- 5.2 Therefore, on balance the Trust considers that the public interest in disclosure of the Report is outweighed by the public interest in maintaining the exemptions.

6. ***Further queries***

- 6.1 I hope that this explanation to you of why the Trust considers it is not required to comply with your request in full is clear. Should you have any questions, please contact me. If you remain dissatisfied with the handling of your request or complaint following an internal review, you have a right to appeal to the Information Commissioner at:

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

www.ico.org.uk

Yours sincerely

A handwritten signature in black ink, appearing to read "David Wyndham Lewis". The signature is fluid and cursive, with a large initial "D" and "W".

David Wyndham Lewis
**Director of Technology and
Transformation**

