

Decision

1. When was Monitor first made aware of the allegations?

Monitor was first made aware of the histopathology allegations during a routine telephone call with the Trust on 1 June 2009.

2. By whom was Monitor made aware?

The telephone call was with the Chairman of the Trust, Mr John Savage.

3. Please provide me with copies of the documentation received by Monitor that notified it of the allegations.

As mentioned above Monitor was notified via a telephone call. Monitor subsequently received an email from NHS Bristol on 9 June 2009: Document 1. There are two attachments to this email, Documents 2 and 3 respectively.

I have decided to exempt these documents from release pursuant to section 41 of the FOIA (information provided in confidence). There are 2 components to this exemption (1) the information must have been obtained by Monitor from another person and (2) disclosure of the information would give rise to an actionable breach of confidence.

The documents comprise of information provided to Monitor by a third person, NHS Bristol. I am of the view that if NHS Bristol were to take Monitor to court for a breach of a duty of confidence, on the balance of probabilities, NHS Bristol would win. My reasons are as follows:

NHS Bristol's reasonable expectation in sending the documents was that the content within in would remain private and that it would only be used by Monitor for the specific and limited purposes of regulating the Trust.

The information was imparted in circumstances which created an obligation of confidence – this was made expressly clear by marking the email '*sensitivity – confidential*' and by marking Document 3 '*Strictly Confidential*';

Having consulted NHS Bristol about the release of this information, they expressed that the release of Document 2 would cause them harm and/or damage. This is because they have decided not to release any information which they have already provided to the independent inquiry, including Document 2, and Monitor's release of the information would undermine their position.

Document 3 contains medical information which may identify patients of the Trust and Monitor's *Compliance Framework* states that we will aim to protect the interests of patients in considering whether or not to disclose information

The information is not trivial and is not readily available by other means.

The default public interest test inherent in section 41 is such that confidential information should not be disclosed unless the public interest in disclosure outweighs the interest in withholding the information.

I accept that there is a general public interest in furthering the public's understanding of alleged healthcare concerns and participation in public debate. I accept also that there is a public interest in this issue specifically in that there has been media attention and interest expressed by patients and their advocates. Having weighed up the competing factors, I consider that the public interest in disclosure does not outweigh the strong default interest in