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Research Paper

STEALING THE NHS?

HOW CARELESS IS THE NHS BEING WITH OUR TAX MONEY?

JULIA MANNING

"…if we only take the lowest given estimate of percentage losses, this would still amount to £3.3 billion of taxpayer's money not being spent on genuine healthcare needs." Pg 2

INTRODUCTION

To state the obvious, public services are funded by our hard earned tax money no matter who provides them. Just as we look for value for money in our everyday purchases, when we have handed our money over to the State, we should be reassured that those spending it are getting value for money as well. The lack of clarity around accountability in the Health Bill has been one of the major criticisms, both for processes and purchasing, but the situation isn't exactly perfect now. When it comes to hard cash, it has already been established that the public sector as a whole in the UK loses an estimated at £21 billion[1] every year due to fraud. However the National Fraud Authority figures have only one public

[1] http://www.attorneygeneral.gov.uk/nfa/WhatAreWeSaying/NewsRelease/Pages/fraud-costs-the-UK-over-38billion.aspx (accessed 31.3.11)

sector indicator for the NHS in their estimate, which is a valuation of £165million for patient charges fraud[2]. Even taking into account an estimated level of £132million fraud in the private health sector (including healthcare, pharmaceutical and biotechnology) that still only amounts to £297million. Yet the global indications for loss of public money to healthcare fraud are between 3.29% and 10%[3].

With an NHS budget of £102 billion, if we only take the lowest given estimate of percentage losses, this would still amount to £3.3 billion of taxpayer's money not being spent on genuine healthcare needs. That amounts to all that the NHS spends on cancer drugs, hip replacements, cataracts and dentistry put together[4]. Other research has shown this money being siphoned off and spent on stud farms[5], 'ghost' employees[6], luxury lifestyles[7], private school fees and property portfolios[8].

In the last three years for which figures are available (2006 - 2009) the NHS Counter Fraud Service cost £32m to run yet only recouped £10m[9]. It did achieve 188 convictions and the £10m does not take into account the amount of fraud prevented by proactive activities that may have created a deterrent effect. However against the estimated losses of £3.3 billion minimum, this amount is a fraction of what we are probably losing. And that means fewer drugs, fewer staff and fewer treatments that the NHS is able to afford.

We decided to try and get a sense of what was happening in NHS Trusts across England. If the estimated losses are so great, how seriously were they taking this issue? A brief literature review showed that some Trusts not only think the issue is important and are extremely proactive, but publish and circulate their findings to their staff. For others there was little evidence of activity. Taking advice from Jim Gee, who was the first head of the NHS Counter Fraud service in 1998, 2020health submitted FOI requests to NHS Foundation Trusts, NHS Hospital Trusts, Mental Health and Community Trusts and Primary Care Trusts

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[2] http://www.attorneygeneral.gov.uk/nfa/WhatAreWeSaying/Documents/AFI%202011%20Breakdown%20A3%20Sheet.pdf (accessed 31.3.11)
[3] http://www.publicfinance.co.uk/features/2010/01/bad-medicine/ (accessed 31.3.11)
[4] Cancer drugs ~£700m; Hip replacements ~£250m; cataracts ~£270m; Dentistry ~£2.1Bn
[5] http://www.independent.co.uk/news/uk/crime/exnhs-boss-jailed-for-pound200000-fraud-1996714.html (accessed 27.4.11)
[6] http://www.ealingpct.nhs.uk/Library/PDF/FraudFocusIssue15Autumn2010.pdf (accessed 27.4.11)
[7] http://www.metro.co.uk/news/832185-nhs-consultant-jailed-over-fraud (accessed 27.4.11)
[8] http://www.plymouthpct.nhs.uk/CorporateInformation/Documents/Counter%20Fraud%20Service/FRAUD%20COUNTS%201st%20Edition%20301107.pdf (accessed 27.4.11)
[9] http://www.libdems.org.uk/news_detail.aspx?title=NHS_fraud_investigations_cost_three_times_more_than_they_recover_says_Lamb&pPK=552bbd0d-98a4-4158-95dc-35dea6e40639

across England in the summer of 2010 before Primary Care Trusts began to refigure. This report details our findings, analyses our results and raises questions about how seriously the NHS is taking the detection and prevention of fraud.

Case Study 1

In June 2010 Louise Tomkins was found guilty of plundering £200,000 from the NHS while working as a general manager at Hammersmith Hospital NHS Trust[10] to fund her stud farm. She fabricated invoices for supplies that looked as though they were for medical equipment which because of her senior position were not checked. The money went straight to her suppliers for stable upkeep, grazing land, vets fees, saddles and insemination of four of her mares at Southfield Stud. Her fraud was uncovered by chance when her successor reviewed past activity.

"If an organisation doesn't have accurate information about the nature and scale of its losses how can it implement the right solution to reduce them or make the right investment to achieve the return on investment which is possible?" Jim Gee,

[10] http://www.dailymail.co.uk/news/article-1285635/NHS-manager-jailed-plundering-200-000-hospital-funds-pay-horse-stables-stud-business.html#ixzz1LYv4GYsT

EXEC SUMMARY

Is the NHS taking fraud seriously? In order to evaluate fraud properly we need to ask the right questions. It's not just about detection but about prevention and being able to calculate losses. Being active in detection is in itself a deterrent and organisations that are effective get a reputation for scrutiny and stewardship although the feared response expressed by some seems to be one of appearing to be careless.

In this research study there were NHS Trusts that were very obliging and who obviously took their financial responsibilities earnestly. However the **lack of scrutiny and stewardship that was exhibited by many other NHS Trusts and the legislation that is used by some to hide behind needs to be made public**. If we are to have an NHS that is fit for purpose, this includes apposite use of resources.

At the moment the **reporting of counter fraud activity is still around the processes that have been put in place, not about efficiency and outcomes.** Documents that have been produced to guide the new emerging NHS organizations have not spelled out who will be responsible for counter fraud and this needs to be made clear.

The modus operandi of fraudsters in the NHS is already well known. **There are tried and tested ways of siphoning off money, claiming for work not done or for more than was received.** 2020health devised questions designed to demonstrate how seriously NHS Trusts took the issue of fraud. These covered the number of days spent employing someone to investigate fraud and to prevent fraud, how much they spent on countering fraud and how many fraud allegations have been pursued.

The response rates to our questions were between 14% and 75%. Bearing in mind that every pound that NHS Trusts receive is from the tax payer, it is salient to note that not only were answers withheld, but that when NHS Trusts expressed concerns about their information they were not about reassuring the public that they were spending the resources properly but more about being 'found out'.

Although more fraud investigations are taking place year on year, some NHS Trusts undertook no investigations at all. Some also took great pains to hide behind clauses in the FOI Act legislation, claiming that information was commercially sensitive, confidential or part of the Audit function.

Our findings demonstrate that **tax payer's money is being wasted and the NHS is probably still losing billions in fraud.** Some finance staff within NHS bodies do not know what is going on in their Trust and they are not being held accountable. **The secrecy is quite astonishing considering public money is being spent.** NHS Trusts are hiding behind legislation that was designed to ensure the public could have reassurance about financial transparency. **They have a moral obligation to show that they are handling our money responsibly.**

We therefore recommend:

1. **End to secrecy** - Clarification of NHS Trust responsibility around reporting of counter fraud activity and spending to the public to enable transparency and accountability.
2. **Outcomes not process** - Change in the reporting requirements to provide clear and accurate outcomes information about how much losses are, to what extent they have been reduced, to what extent fraud losses have been recovered, and what preventative measures are in place.
3. **Consequences for concealment** - Fine NHS Trusts who do not publish their counter fraud outcomes.

DATA THAT MEANS SOMETHING

1.1 The easy question to ask an NHS Trusts about fraud is "How much fraud have you detected in the past year?" This question is not only simple, but unfortunately wholly inadequate. In 1998 an NHS Counter Fraud service was set up as part of the Department of Health and headed up by Jim Gee, now Director of Counter Fraud Services at PKF (UK) LLP and Chair of the Centre for Counter Fraud Studies at University of Portsmouth. Prior to this there was no formal system for detecting fraudulent use of public money in the NHS, despite the NHS having been absorbing taxpayer's cash for the previous 48 years. In the years that followed, fluctuating but significant amounts of fraudulent activity were discovered along with the different modus operandi of fraudsters. The reason that the first question is inadequate is because it only asks about what has been detected, not what hasn't been found (a known unknown e.g. expenditure and supplies or budget not matching) or prevented. Detection is only half the equation, the other half being prevention.

1.2 Indirectly, as an organization becomes more engaged in detection, this has a deterrent effect and some staff are rightly put off stealing NHS resources. But there can be direct action that is preventative. Scrutiny measures, cross-checking orders with supplies, insistence on proof of payment exemption, electronic prescribing all make fraud harder to commit.

1.3 The questions we needed to ask therefore should give the fullest possible picture of how Trusts approach stewardship through detection *and* prevention of their precious and finite public monies.

1.4 The 'Directions to NHS bodies on Counter Fraud measures 2004'[11] guidance sets out the responsibilities for NHS bodies with respect to protecting the public money that they receive. This includes setting out for the year ahead a work plan for ensuring the seven generic areas of counter fraud activity and a work-plan template is available from the NHS Business Services Authority. Guidance to PCTs for instance

[11] http://www.nhsbsa.nhs.uk/CounterFraud/Documents/directions_fraud_measures_04.pdf (accessed 28.4.11)

recommend that they have a basic commitment of 101 working days to be spent on pro-actively deterring fraud. This does not include any time required for investigations of suspected fraud. However whilst NHS Trusts are legally obliged to employ counter-fraud professionals, this can be as little as a few days a year. Variation from Trust to Trust is to be expected because of geographical and population size differences , but the counter-fraud compliance procedures which Trusts are obliged to report back on are about *process*. This has led to a culture where once again procedures are commended rather than outcomes. This seems counterintuitive, when NHS Trusts are not required to report on the actual levels of fraud detected or prevented and how much success they have had tackling it.

1.5 *The function of GP Commissioning Consortia*[12] is the guidance that has been produced for the organisations that are replacing Primary Care Trusts as conduits of up to £80bn of public money earmarked for the NHS. It fails to make any mention of NHS counter fraud commissioning or responsibilities. While it couldn't include every detail, the omission of this vitally important task is a worrying omission.

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12 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124979

NHS FRAUD

2.1 The modus operandi of fraudsters in the NHS is already well known. There are tried and tested ways of siphoning off money, claiming for work not done or for more than was received. These include:

2.2 Fraud[13]

A. Claiming for work that does not exist e.g.
   - **Professionals** creating ghost patients
   - **Professionals** altering prescriptions
   - **Professionals** claiming for out of hours visits
   - **Professionals** working elsewhere while off sick or masquerading as other staff
   - **Patients** altering prescriptions
   - **Managers** making fake timesheet and payroll claims
   - **Suppliers** making bogus invoices

B. Claiming for higher value items e.g.
   - **Professionals** dispensing a cheaper product than claimed for
   - **Professionals** altering patient treatment details

C. Securing materials/services on false premises e.g.
   - **Professionals** secure student bursaries
   - **Community Professionals** claiming for excess car mileage
   - **Professionals** falsify credentials for applications or procurement
   - **Professionals** secure services thereby impacting others
   - **Patients** obtaining controlled drugs

D. Insider theft e.g.
   - **Professionals** theft of prescription forms
   - **Professionals** theft of inventory

2.3 Fraud & Error

- **Patients** wrongful claim of exemption from fees
- **Professionals** overprescribing, requested or administered

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[13] With thanks to Detica for contributing to this list.

2.4 With the even the smallest NHS Trust budget being in the hundreds of millions, there is much at stake. Only by having effective scrutiny by trained individuals, experienced in the modus operandi of fraudsters and with enough information to judge budget losses will we stop tax payer's money being drawn off by thieves.

Case Study 2

Holidays and school fees were paid for with £307,000 of tax payer's money that was fraudulently claimed by a dentist working in the NHS[14]. John Hudson worked at HMP Altcourse in Fazakerley, Liverpool for ten years but was also paid for working at another prison, to which he never went. He claimed NHS money whilst also being paid for his private dentistry work at the jail by the prison authorities. He was jailed in November 2010, though we don't know if he's now alongside his former patients.

[14] http://www.cosmeticdentistryguide.co.uk/news/prison-dentist-jailed-for-nhs-fraud-6898

3.1 With the help of the former head of NHS Counter Fraud, we devised questions designed to demonstrate how seriously NHS Trusts took the issue of fraud. These covered the number of days spent employing someone to investigate fraud and to prevent fraud, how much they spent on countering fraud and how many fraud allegations have been pursued.

3.2 The questions were as follows:

- **Question 1.** What is the range of days allocated for your local counter fraud specialist function to undertake 'reactive' counter-fraud work annually for each of the last 3 years?
- **Question 2.** How many days are tabled by your local counter fraud specialist function for 'proactive' counter-fraud work annually for each of the last 3 years?
- **Question 3.** How much does your local counter fraud specialist function cost per day (£)? What has this been for the last 3 years
- **Question 4.** Expressed as a figure (£), what has been the total Expenditure for your NHS Trust for each of the last 3 years? (Annual Counter-Fraud Spend)
- **Question 5.** How many fraud allegations have been investigated annually for each of the last 3 years (defining an investigation as the time elapsed from when fraud is alleged to the time the case is closed)?

3.3 2020health researchers sent out freedom of information requests to 130 NHS Foundation Trusts, 81 NHS Acute Hospital Trusts, 151 Primary Care Trusts and collated the responses.

3.4 These results were compiled by 2020health but individual results were self report by trusts via information released under the Freedom of Information Act 2005.

4.RESULTS

4.1 The response rates to our questions were between 75% and 14%. The poorest response rate was for the question on the total spent on counter fraud activity by NHS Foundation Trusts. The response rate implies information given in full. Information not recorded or incomplete has been categorised here as a non-response. **Many trusts did not hold the last 3 years worth of information even though the current protocol has now been in place for 7 years.**

4.2 As well as receiving the data, it is worth noting that we also received a flood of phone calls. Real concern was expressed around what we were going to do with their data. There were several concerns expressed:

- they were going to be 'named and shamed'
- they had failed to act on fraud
- they had to admit to being a victim of criminal activity
- they were ignorant of their position

Bearing in mind that every pound they receive from the tax payer, it is salient to note that their concerns were not about reassuring the public that they were spending the resources properly but about being found out.

4.3 Appendix 1 has the results from questions 1-5 set out in tables 1-5 comparing responses from Acute (Hospital), Primary Care and Foundation Hospital Trusts. The responses from Mental Health Trusts were negligible and not compiled. We have not taken into account the variation in size of NHS trusts or compare the overall budget compared with their expenditure on counter fraud; this was outside the remit of this project.

4.4 Tables 1 and 2 show the results of how many days Trusts planned to spend on counter fraud activities.

4.5 Some Trusts admitted that what they had planned for in terms of days allocated to both reactive and proactive work was out of sync with the actual days spent. This was information given voluntarily. We only asked about the days that were planned to be spent on counter fraud activity as this is what has to be formally reported at the start of the financial year.

4.6 Table 2 also shows a huge variation in the range of days that Trusts spend time-wise on proactive counter fraud work. In 2009/2010 there was over a 350 day variation in PCTs. We doubt whether this could be accounted for simply by the size of the organisation.

4.7 Counter fraud officers who would talk to us indicated that requests for inspections of activity by them e.g. of a practice's prescription claims are rare. Our understanding is that inspections should take place on a regular basis, but we didn't have time to research this further.

4.8 Of note for day rate costs in Table 3 is that some trusts gave a banding. When this occurred, these results took the lowest amount on that range so as not to inflate results.

4.9 Table 4 shows that no more than 36% of Trusts were prepared to say how much they had spent on preventing or detecting fraud. When it came to FTs, only 15% were prepared to declare how much money they had spent in 2010 on ensuring their public money was spent correctly.

4.10 Table 4 also shows the range in what was spent in a year by a Trust was lowest for a PCT in 2009 at £5,000 and highest also for a PCT at £84,540.

4.11 Table 5 shows in 2009/10 211 Trusts investigated 2272 fraud allegations in total. That's an average of 11 per trust. The highest level of investigation was in a PCT which had initiated 90 enquiries, but 13 Trusts who gave us figures investigated no cases at all.

4.12 Overall the trend is up; this is 514 more investigations than in 2007/08 or an increase of 23%.

4.13 Appendix 2 has the letter copied in to us accidentally by Royal Surrey County Hospital NHS Foundation Trust. On receipt of our FOI request this letter was circulated to other Trusts advising them not to disclose information to us about their counter fraud activities.

4.14 Points of concern

- Not all NHS bodies were able to demonstrate that they are aware of potential for fraud and are taking action to prevent it.
- Foundation Trusts were consistently the most reticent at declaring their activity and results. They cited exemption clauses from the Freedom of Information Act saying the information we had asked for was either commercially sensitive, could constitute a breach of confidence or could be withheld as it was classified as part of the Audit function. As a public body, in receipt of public money, don't we have right to know

that an organisation is doing all it can to ensure our money is spent on our health? We cannot see how making this spending public could have any possible bearing on a future tender for services. If anything, logically, non-disclosure would seem to indicate complacency or ignorance and should deter commissioners.

- Some Trusts who responded were honest enough to say that they didn't hold the data we asked for. That means that they had no formal record of time, cost, outcomes, or activity thus not complying with the law that says counter fraud should be a statutory function on which they report annually.
- Some Trusts undertook no investigations of suspected fraud at all. Ignorance of financial probity should not be tolerated.
- All the results relied on self-reporting. No public scrutiny takes place. Surely the public should know how their local NHS organisation is ensuring that money is spent on services and not being stolen.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Tax payer's money is being wasted and the NHS is probably still losing billions in fraud. Some finance staff and accountants within NHS bodies do not know what is going on in their Trust and they are not being held liable.

5.2 The secrecy is quite astonishing considering public money is being spent. NHS Trusts are hiding behind legislation that was designed to ensure the public could have reassurance about financial transparency. They have a moral obligation to show that they are handling our money responsibly.

5.3 It is still unclear whose responsibility counter fraud will be when PCTs go. Are GP Commissioner prepared to take over hitherto PCT responsibilities, and if all NHS Trusts are to become Foundation Trusts, as things are now will that mean that scrutiny is even harder?

5.4 We therefore recommend:

1. **End to secrecy** - Clarification of NHS Trust responsibility around reporting of counter fraud activity and spending to the public to enable transparency and accountability.
2. **Outcomes not process** - Change in the reporting requirements to provide clear and accurate outcomes information about how much losses are, to what extent they have been reduced, to what extent fraud losses have been recovered, and what preventative measures are in place.
3. **Consequences for concealment** - Fine NHS Trusts who do not publish their counter fraud outcomes.

"fraud loss measurement and reduction is one way for private companies to gain a real competitive advantage and for public sector organisations to painlessly achieve efficiencies." Jim Gee

APPENDIX 1

Fraud investigation and detection is only half the equation, the other half being prevention.

Question 1. What is the range of days allocated for your local counter fraud specialist function to undertake 'reactive' counter-fraud work annually for each of the last 3 years? Results ordered smallest to largest in 2009/2010.

Table 1 Year	2007 2008	2008 2009	2009 2010		2007 2008	2008 2009	2009 2010		20072 008	2008 2009	2009 2010
	Acute Trusts				PCTs				FTs		
TOTALS (days)	**2,064**	**2,2 95**	**2,217**		**1,882**	**2,169**	**2,273**		**1,167**	**1,396**	**1,447**
AVERAGES (days)	**40.5**	**40. 0**	**43.5**		**32.5**	**35.6**	**39.0**		**32.4**	**35.8**	**36.2**
RANGE (days)	**0-200**	**0.5-200**	**1-215**		**0-200**	**0-200**	**0-200**		**0-200**	**0-200**	**0-200**
RESPONSE RATE	**75% (61/81, 7 replied days were bought 'as required')**				**67% (101/151, 41 replied days were bought 'as required')**				**34% (44/130, 17 replied days were bought 'as required')**		

Question 2. How many days are tabled by your local counter fraud specialist function for 'proactive' counter-fraud work annually for each of the last 3 years?

Table 2 Year	2007 2008	2008 2009	2009 2010		2007 2008	2008 2009	2009 2010		2007 2008	2008 2009	2009 2010
	Acute Trusts				PCTS				FTs		
TOTAL: All Trusts (days)	3,687	4,097	4,436		7,198	8,582	9,255		2,547	3,193	3,664
AVERAGES (days)	**60.4**	**67.2**	**72.7**		**78.2**	**88.5**	**95.4**		**50.9**	**59.1**	**64.3**
RANGE (days)	**10-217**	**18-211**	**17-263**		**20-242**	**6-330**	**14-368.5**		**9-120**	**10-154**	**13.5-130**
RESPONSE RATE	**75% (61/81 some years not indicated)**				**64% (97/151)**				**44% (57/130 some years not indicated)**		

Question 3. How much does your local counter fraud specialist function cost per day (£)? What has this been for the last 3 years

Table 3 Year	2007 2008	2008 2009	2009 2010		2007 2008	2008 2009	2009 2010		2007 2008	2008 2009	2009 2010
	Acute Trusts				**PCTS**				**FTs**		
Average per day (£)	**306**	**301**	**312**		**246**	**262**	**276**		**282**	**282**	**299**
RANGE (£)	**226-475**	**158-503**	**192-452**		**126-338**	**116-425**	**117-425**		**199-432**	**190-450**	**269-362**
RESPONSE RATE	**27% 22/81**	**30% 24/81**	**30% 24/81**		**31% 47/151 ***	**33% 51/151 ****	**34% 52/151 *****		**19% 25/130 ********	**19% 25/130**	**21% 27/130**
					56 PCTs refused to report on this information.				**30 FTs refused to report on this information.**		

*(12 further Trusts did not hold the information for this year)

**(8 further Trusts did not hold the information for this year)

***(7 further Trusts did not hold the information for this year)

****(2 further Trusts did not hold the information for this year)

Question 4. Expressed as a figure (£), what has been the total Expenditure for your NHS Trust for each of the last 3 years? (Annual Counter-Fraud Spend)

Table 4	2007 2008	2008 2009	2009 2010	2007 2008	2008 2009	2009 2010	2007 2008	2008 2009	2009 2010
	Acute Trusts			PCTS			FTs		
TOTALS (£m)	0.71	0.85	0.90	1.3	1.5	1.7	0.35	0.42	0.49
Average (£)	28,443	32,601	31,996	28,997	32,818	36,628	19,636	23,664	25,772
RANGE (£)	8,190-32,000	20,140 – 31,000	12,616 – 17,701	5,549-84,540	5,000-84,540	15,360-84,540	6,780 – 33,775	7,316-43,950	10,300 - 48,000
RESPONSE RATE	25/81 (31%)	26/81 (32%)	28/81 (36%)	45/151 (30%)	47/ 151 (31%)	48/ 151 (32%)	18/ 130 (14%) *	18/ 130 (14%) *	19/ 130 (15%)

*2 further Trusts did not hold the information for this year

Question 5. How many fraud allegations have been investigated annually for each of the last 3 years (defining an investigation as the time elapsed from when fraud is alleged to the time the case is closed)?

Table 5	2007 2008	2008 2009	2009 2010	2007 2008	2008 2009	2009 2010	2007 2008	2008 2009	2009 2010
	Acute Trusts			PCTS			FTs		
TOTALS	539	549	666	810	932	1073	409	451	533
AVERAGES	11	10	12	9	10	11	8	8	9
RANGE	1-67	2-42	1-90	0-69	0-50	0-48	0-50	0-41	0-41
RESPONSE RATE	49/81	54/81	56/81	92/ 151	98/ 151	99/ 151	52/ 130 *	54/ 130 **	56/ 130 ***

*8 further Trusts did not hold the information for this year

**4 further Trusts did not hold the information for this year

***2 further Trusts did not hold the information for this year

APPENDIX 2

Letter emailed from Royal Surrey County Hospital NHS Foundation Trust and copied into us by accident.

"Re the Freedom of Information request email from 2020health.org. If you have been approached by them, then other than releasing the Trust's overall expenditure (which will already be published in your Annual Reports), we believe that the other information requested should be withheld under a number of exceptions.

Firstly, we believe that information concerning items 1, 2 and 3 of the FOI request should not be disclosed for the following two reasons: 'Commercial Interests' and 'Information provided in confidence'.

1. Commercial Interests. The request is for commercially sensitive information.

Section 43 of the Act sets out an exemption from the right to know if:

- the information requested is a trade secret, or
- release of the information is likely to prejudice the commercial interests of any person (a person may be an individual, a company, the public authority itself or any other legal entity).

This will prejudice our commercial interests as:

- The information within our Counter Fraud plans effectively contains the details of the contract the Trust has with us.
- The activity is conducted in a commercial environment, one being subject to a competitive tendering.
- The information is commercially sensitive as we compete by offering something different from our rivals. The days and rates charged reflect our unique counter offering and are therefore commercially sensitive.

2. Information provided in confidence.

Information is provided in confidence. I draw your attention to the paragraph below the tables of contents page in the counter fraud planning document and progress papers which states "This report has been prepared for our client and should not be disclosed to any third parties, including in response to requests for information under the Freedom of Information Act, without the prior written consent of RSM Tenon and our client. Whilst every care has been taken to ensure that the information provided in this report is as accurate as possible, it is based upon the documentation reviewed and information provided to us during the course of our work. Thus, no guarantee or warranty can be given with regard to the advice and information contained herein."

Section 41 states that information is exempt information if:

- It was obtained by the public authority from any other person (including another public authority), and
- the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

Secondly, we believe that information concerning items 5, 6 and 7 of the FOI request cannot be disclosed for the reason of 'Public Audit'.

3. Counter Fraud is essentially an Audit function of the Trust.

Section 33(1) applies to any public authority which has functions in relation to:

- the audit of the accounts of other public authorities, or
- the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

Information held by a public authority to which this section applies is exempt

information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1). The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

I hope you appreciate our position in this matter.

Kind regards,"

ABOUT THE AUTHOR

Julia Manning is a founder and Chief Executive of 2020health.org. She grew up in Derbyshire and Hampshire, studied visual science at City University and became a member of the College of Optometrists in 1991. Her career has included being visiting lecturer in clinical practice at City University, visiting clinician at the Royal Free Hospital, being a founder member of the British Association of Behavioural Optometrists and working with Primary Care Trusts in south east London. She was a Director of the UK Institute of Optometry for 6 years and founded Julia Manning Eyecare, a specialist optometry practice for people with mental and physical disabilities which was bought by HealthcallOptical Ltd in August 2009. Her interests include emerging technologies, culture and social policy.

ACKNOWLEDGEMENTS

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ABOUT 2020HEALTH

2020health.org is a not-for-profit, independent grass- roots think tank for Health and Technology. Our vision is to shape the present and direct and influence future health, social and technology policy, putting community at the centre of all we do. We aim to ensure policy reflects the wisdom and experience of professionals, to broaden involvement and debate on key concerns to give value for money and build on the achievements of the present to create the vision for improved healthcare. Many of our reports and proposals have been taken on board by the main political parties.

For more information please contact us at: 83 Victoria Street, London SW1H 0HW or on 020 3170 7701 or at admin@2020health.org.

Disclaimer: This data is true and accurate to the best of the authors' knowledge and are based on self-reported results from NHS Trust under the Freedom of Information Act 2005. Some discrepancies may occur in results reported.