Freedom of Information Act 2000 – Request for Information

Thank you for your request for information received on 5th July 2017 in relation to the County Durham and Darlington NHS Foundation Trust (Trust). We are dealing with your request under the provisions of the Freedom of Information Act 2000.

You requested information regarding the vascular review. Specifically you asked for:

From March 2014 to July 2017 inclusive, redacted if necessary for data protection:

1. All emails sent by Consultant Vascular Surgeon Philip Davey (GMC membership number 4541132) to AND received from the following:

   • any email address containing @vascularsociety.org.uk
   • Chief executive of County Durham and Darlington NHS Foundation Trust, Sue Jacques
   • Consultant vascular Surgeon Professor Gerard Standsby of Newcastle upon Tyne Hospitals NHS Foundation trust
   • Chief Executive of Gateshead Health NHS Foundation Trust Mr Ian Renwick
   • Chief Executive of Newcastle upon Tyne Hospitals NHS Foundation trust Sir Leonard Fenwick
   • Chief Executive of Sunderland City Hospitals Ken Bremner

2. All emails sent by Chief executive of County Durham and Darlington NHS Foundation Trust, Sue Jacques to AND received from the following:

   • any email address containing @vascularsociety.org.uk
   • Consultant Vascular Surgeon Philip Davey (GMC membership number 4541132)
   • Consultant vascular Surgeon Professor Gerard Standsby of Newcastle upon Tyne Hospitals NHS Foundation trust
Chief Executive of Gateshead Health NHS Foundation trust Mr Ian Renwick
Chief Executive of Newcastle upon Tyne Hospitals NHS Foundation trust Sir Leonard Fenwick
Chief Executive of Sunderland City Hospitals Ken Bremner

In response to a request for clarification made on 1st August 2017, you kindly confirmed that you were only interested in emails where the subject of the email, or the content of the email referenced the ‘Vascular Review’. Our interpretation is that the term ‘Vascular Review’ refers to the independent review of vascular services undertaken on behalf of the North East regional vascular network, to recommend the third site for vascular services, with South Tees Hospitals NHSFT and Newcastle Hospitals NHSFT accepted as hosting the first two sites. The recommendation of the report, which favoured Sunderland over Durham, is now a matter of public record as outlined below:

County Durham and Darlington NHS Foundation Trust replies:

In response to your request, searches have been conducted of the mailboxes of Mr Davey and Ms Jacques, for the correspondents and date ranges you specified. As a result of these searches I can confirm that the Trust holds emails as outlined in the Annex. We have disclosed to you those emails summarised in Part A of the Annex.

Having followed due process, the Trust considers that the remaining emails should be exempted from disclosure under Section 36 (b) (ii) of the Freedom of Information Act, where disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation and so prejudice the conduct of public affairs. The Trust is willing to provide the essence and / or outcome of the emails involved, as its response to the report of the independent reviewers is a matter of public record, having been discussed at the North East Joint Overview and Scrutiny Committee meeting on 27th October 2016 (see link below), and has therefore included summary details in the Annex. The Trust considers, however, that the publication of emails involving the free exchange of views and personal opinions between members of a network, or between internal staff, in response to draft recommendations, and further sharing of views and opinions in support of further deliberation, would be likely to prejudice the conduct of public affairs as outlined in Section 36 (b) (ii). This is because disclosure would establish a precedent that the free and frank exchange of views on draft reports, recommendations and proposals may be disclosed to the public and thereby inhibit the exchange of those views, in email format, making it likely that:

- Those asked for views might not engage in email discussion in future, potentially slowing down or weakening the decision-making process; and
- Views would be expressed more reticently or in a more circumscribed fashion, increasing the risk that they may not be given due weight in the decision-making process.
These considerations apply to those involved on this occasion, but equally to others in the Trust who may be involved in similar discussions in future. It should be noted that, in law, the term ‘would be likely to’ requires a “significant and weighty chance” that the consequence would arise, rather than a probability greater than 50%. The Trust is satisfied that this test is met.

NHS England’s report to the North East Joint Health Scrutiny Committee meeting on 27th October 2016 can be found at the following link.
https://www.hartlepool.gov.uk/meetings/meeting/3577/north_east_joint_health_scrutiny_committee

The minutes of the meeting can be found using the further link below:
https://www.hartlepool.gov.uk/meetings/meeting/3581/north_east_joint_health_scrutiny_committee

Discussion in respect of the review recommendations has not been concluded and you will see from the report and minutes that a consultation process, the nature and content of which would need to be agreed, publicly, through the North East Joint Health Scrutiny Committee is envisaged. The emails which we are seeking to exempt therefore relate to a live issue, and a second consideration for the Trust in response to your request is therefore the risk of pre-empting due process in this regard. This further likelihood of prejudice is, in the Trust’s view, covered by part (c) of Section 36 of the Act, where disclosure would ‘otherwise be likely to prejudice the conduct of public affairs’.

The Trust recognises that there is a genuine public interest in understanding fully the decision-making process with respect to the Vascular Services Review, given that any change to services may impact upon patients and the public. It is acknowledged that this interest extends to the recommendations of the independent review, and the responses and further debate which it has generated. However, having weighed this interest against the likelihood of prejudice to the conduct of public affairs outlined above, we consider that the balance of the public interest lies within mitigating the likelihood of prejudice.

Under section 40(2) of the Act it states that information which constitutes personal information about a third party will be exempt if disclosure of the third party personal information would:-

- breach the data protection principles (s40(3)); or
- breach the third party’s right to prevent processing likely to cause damage or distress (s40(3)); or
- be exempt from disclosure under the subject access provisions of the Data Protection Act if the third party made a request for the information (s40(4)).

The Trust does not believe that it would be fair to disclose the email addresses and names of other parties included as recipients, or copied into, emails provided as it would not be fair to those individuals for this information to be made public. We
therefore believe that the exemption contained within section 40(2) of the Act is engaged in respect of other parties’ email addresses and have redacted them in the emails provided.

In line with the Information Commissioner’s directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the County Durham and Darlington NHS Foundation Trust website.

If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me on the above telephone number or at the above address.

If you are unhappy with the way your request for information has been handled, you can request a review by writing to:

The Chief Executive
County Durham & Darlington NHS Foundation Trust
Darlington Memorial Hospital
Hollyhurst Road
Darlington
DL3 6HX

If, you remain dissatisfied with the handling of your request or complaint, you have a right to appeal to the Information Commissioner at:

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

Telephone: 0303 123 1113
Website: www.ico.gov.uk.

There is no charge for making an appeal.

Yours sincerely

Joanna Tyrrell
Freedom of Information Officer
### Annex – Emails identified from search

#### Part A – Emails disclosed

<table>
<thead>
<tr>
<th>Date</th>
<th>From</th>
<th>To</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10th Sept 2015</td>
<td>P Davey</td>
<td>S Jacques</td>
<td>Request for advice re consultant recruitment given no firm timetable advised by the North East network for the Vascular Services Review.</td>
</tr>
<tr>
<td>10th Sept 2015</td>
<td>S Jacques</td>
<td>P Davey</td>
<td>Response to above request</td>
</tr>
<tr>
<td>29th Dec 2015</td>
<td>S Jacques</td>
<td>P Davey</td>
<td>Forwarding of an email to Peter Dixon of NHS England advising of a suggested change to the terms of reference for the Vascular Review.</td>
</tr>
<tr>
<td>29th Dec 2015</td>
<td>P Davey</td>
<td>S Jacques</td>
<td>Response thanking S Jacques for the above</td>
</tr>
<tr>
<td>5th January 2016</td>
<td>P Davey</td>
<td>G Standsby and others</td>
<td>Confirmation that University Hospital North Durham could accommodate a review visit on 12th January 2016. This email is the latest in a chain in which other Trusts have confirmed their availability. The remaining emails in that chain have been exchanged by individuals not within the scope of your request and have therefore been deleted from the content disclosed.</td>
</tr>
<tr>
<td>3rd January 2016</td>
<td>P Davey</td>
<td>S Jacques and others</td>
<td>Arrangements for the visit of the review team.</td>
</tr>
</tbody>
</table>

#### Part B – Emails exempted under Section 36 (b) (ii) and Section 36 (c)

<table>
<thead>
<tr>
<th>Date</th>
<th>From</th>
<th>To</th>
<th>Essence / Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>25th January 2016</td>
<td>P Davey</td>
<td>S Jacques</td>
<td>Forwarding an email from NHS England confirming receipt of the draft review report and recommendation and requesting discussion with the Trust.</td>
</tr>
<tr>
<td>25th January 2016</td>
<td>P Davey</td>
<td>S Jacques (and other internal addressees)</td>
<td>Forwarding an email from NHS England issuing the draft report to the regional network, for comment and factual accuracy checking. A summary of the report can be found at the link using the link for the North East Joint Health and Scrutiny Committee meetings provided above.</td>
</tr>
<tr>
<td>1st and 2nd February 2016</td>
<td>P Davey</td>
<td>S Jacques (and other internal addresses)</td>
<td>Mr Davey provided a draft response to the above request for comments, for review and suggested amendment prior to discussion with clinical colleagues. No amendments were requested in Ms Jacques’ response.</td>
</tr>
<tr>
<td>4th February 2016</td>
<td>P Davey</td>
<td>S Jacques</td>
<td>Mr Davey forwarded both his response to NHS England (based on the above) and NHS England’s response to it. The latter was an acknowledgment of receipt and an agreement to respond once they had reviewed it.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mr Davey’s response covered the use of Hospital Episode Data as opposed to data from the National Vascular Registry to evaluate activity levels, travel times to the potential third site, the distribution of activity within teams, and the availability of critical care beds and interventional radiology within the Trust. Supporting evidence was attached and NHS England were asked to give scrutiny and consideration to the points made and supporting evidence provided.</td>
</tr>
<tr>
<td>11th February 2016</td>
<td>P Davey</td>
<td>S Jacques</td>
<td>Forwarding of an email from NHS England with the reviewers’ response to the matters raised in the Mr Davey’s email above, noting an intention to share both as part of an information pack to all network members. The reviewers’ responded to each point.</td>
</tr>
<tr>
<td>Date</td>
<td>From</td>
<td>To</td>
<td>Essence / Outcome</td>
</tr>
<tr>
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</tr>
<tr>
<td>22(^{nd}) February 2016</td>
<td>P Davey</td>
<td>S Jacques (and other internal addressees)</td>
<td>Forwarding of a ‘Vascular Review Update’ from NHS England noting that there was nothing additional to previous emails.</td>
</tr>
<tr>
<td>23(^{rd}) February 2016</td>
<td>P Davey</td>
<td>S Jacques (and other internal addressees)</td>
<td>Email forwarding text for a formal response to NHS England based on the content of the email of 1(^{st}) February 2016 noted above.</td>
</tr>
<tr>
<td>24(^{th}) February 2016</td>
<td>S Jacques</td>
<td>P Davey (and other internal addresses)</td>
<td>Email advising that an initial, formal response will be issued to NHS England, and that the Board was supportive of challenging the report’s recommendation. The recommendation and the essence of the Trust’s response, including the fact of its objections to the recommendation made and its opinion that the depth of work was somewhat superficial, are stated in the report provided to the North East Joint Health Scrutiny Committee meeting of 27(^{th}) October 2016, and can be found on at the link above.</td>
</tr>
<tr>
<td>22 and 23(^{rd}) March 2016</td>
<td>G Standsby</td>
<td>P Davey</td>
<td>Exchange of emails between Mr Davey and Professor Standsby and other network members concerning differences between HES and NVR data, with a request from NHS England for further activity data.</td>
</tr>
<tr>
<td>8(^{th}) July 2016</td>
<td>P Davey</td>
<td>S Jacques (and other internal addresses)</td>
<td>Forwarding of an email from NHS England, which noted the reviewers’ view that activity data supported their recommendation and seeking an update on the Trust’s position.</td>
</tr>
<tr>
<td>12(^{th}) and 15(^{th}) July 2016</td>
<td>S Jacques</td>
<td>P Davey</td>
<td>Exchange of emails responding to the email of 8(^{th}) July 2016, the outcome of which was that the Trust advised NHS England that would review its position following publication of a final report.</td>
</tr>
<tr>
<td>7(^{th}) October 2016</td>
<td>S Jacques</td>
<td>P Davey</td>
<td>Forwarding of an email by S Jacques to NHS England querying the absence of response to the Trust’s letter, responding to the review in February 2016, and querying a reference to service reconfiguration in other correspondence from NHS England.</td>
</tr>
<tr>
<td>23(^{rd}) November 2016</td>
<td>S Jacques</td>
<td>P Davey (and other internal addresses)</td>
<td>Forwarding a response from NHS England to the Trust’s letter of February 2016, and requesting that leads for the Trust’s Surgery Care Group draft a response, together with further work to assess the impact of the recommendation on the time taken for patients to travel to the each of the potential third vascular sites in an emergency. The response from NHS England, dated 22(^{nd}) November 2016, was attached (see note below this table).</td>
</tr>
<tr>
<td>24(^{th}) and 25(^{th}) January 2017</td>
<td>P Davey</td>
<td>G Standsby and others</td>
<td>Exchange of emails regarding availability for a meeting for NHS England to share plans public engagement on the review.</td>
</tr>
</tbody>
</table>

**Note:**
Although it was not part of the email trail identified from the search, for completeness, the Trust responded to NHS England’s letter of 22\(^{nd}\) November 2016 on 15\(^{th}\) January 2017, noting the impact of the review recommendation on the Trust, if it were implemented, including impacts on related services and on Darlington Memorial
Hospital, and matters which would need to be addressed by the Sustainability and Transformation Partnerships, and further acknowledging that travel time analysis did not differentiate between the two potential sites.