Neutral citation number: [2024] UKFTT 00008 (GRC)

Case Reference: EA/2022/0353

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard on: Cloud Video Platform
Heard on: 2 October 2023
Decision given on: 08 January 2024

Before

TRIBUNAL JUDGE FOSS
TRIBUNAL MEMBER GRIMLEY-EVANS
TRIBUNAL MEMBER SCOTT

Between

JOHN HARRISON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:
For the Appellant: the Appellant was not represented, and attended the hearing by telephone.
For the Respondent: The Respondent did not attend the hearing.

Decision: The appeal is ALLOWED. The Information Commissioner's decision, referenced as IC- 184734-T2V5, is not in accordance with the law.

Substituted Decision Notice:

The Chesterfield Royal Hospital NHS Trust must, by no later than 4.00 p.m. on 05 February 2024:

a. **Send to the Appellant the number of serious incidents within Level 2 category (including "Death" but not excluding any other incident which the Trust categorises as a serious incident) occurring within Accident and Emergency and in Acute Medicine within the Trust in the calendar years 2015 to 2019 inclusive.**

b. Send to the Appellant the number of de-escalation request reports in relation to any matter which the Trust categorises as a serious incident, which have been issued within Accident and Emergency and in Acute Medicine within the Trust in the calendar years 2015 to 2019 inclusive.

The Trust shall advise and assist the Appellant to the extent necessary to enable the Trust to communicate the information described in a. and b. above to the Appellant.

REASONS

Introduction to the Appeal

1. On 5 May 2022, the Appellant submitted this request ("the Request") to Chesterfield Royal Hospital NHS Trust ("the Trust"):

> "*Freedom of Information request please how many serious incidents level 2 deaths in 2015-2016-017-2018-2019 please A/E acute medician.*
>
> *How many serious incidents de-escalation request reports have they been in 2015-2016-2017-2018-2019 in A/E acut med (or delogged)*
>
> *All deaths please."*

2. The Trust responded on 1 June 2022 as follows:

> *"In line with the Act the Trust confirms that it holds/holds in part/does not hold the information you have requested in the following format:*
>
> *There were no Level 2 serious incidents relating to deaths reported during 2015 to 2019 for the Accident and Emergency Department.*
>
> *There were no de-escalation requests relating to serious incidents (deaths) reported during 2015 to 2019 for the Accident and Emergency Department."*

3. The Appellant challenged the Trust's response. The Trust maintained its position upon internal review. The Appellant complained to the Information Commissioner ("ICO) on 8 August 2022. By a Decision Notice dated 11 October 2022, referenced IC- 184734-T2V5 (the "Decision Notice"), the ICO decided that he was satisfied on the balance of probabilities that the Trust did not hold the information requested, and which could not, therefore, be provided.

Background

4. The Appellant is concerned that there is widespread and deliberate under-reporting by NHS Trusts of serious incidents affecting patients in their care. In his correspondence with the ICO in this matter, he explained that he has been investigating the circumstances of his

daughter's death in the care of Hull University Teaching Trust. He referred that matter to a Parliamentary Ombudsman who, he says, referred the matter in error to Chesterfield Royal Hospital NHS Trust rather than Hull University Teaching Trust. He inferred from that error that the Ombudsman is investigating matters of under-reporting within the Trust in any event. He has, consequently, sought to explore such matters himself with the Trust.

5. In his correspondence with the ICO, and in his oral submissions, he explained that he has had access, at some point in the past, to data on the Strategic Executive Information Learning System operated by NHS England, which, he says, demonstrated the fact of, and encouragement for, wide under-reporting of serious incidents affecting patients. He noted that the serious incident affecting his daughter was not included in that data. He says that after his initial interrogation of that data, the data was altered and he has not, subsequently, been able to access it.

6. Turning to the Request: when the Trust responded to the Request on 1 June 2022, it ascribed a reference number to the Request: FOI22-2518. It informed the Appellant of his right to ask for an internal review.

7. The Appellant responded by email on 6 June 2022 (using reference number FOI22-2518) as follows:

> "*So you hold this in a different format, De-logged, Severe harm, not death. What provision of the Act are you relying on. You must specify the exemption. Look forward to my vexatious request.*"

8. In its same-day automated response to the Appellant's email of 6 June 2022, the Trust ascribed a new reference number to the Appellant's question: FOI22-2715, indicating that it was to be treated as a new request.

9. The Trust emailed the Appellant on 9 June 2022 (not recording any reference number) as follows:

> "*I write in response to a Freedom of Information Act (FOIA) request received by the Trust which we believe was a request to review our previous response to your contact regarding Level 2 serious incidents and de-escalation requests.*
>
> *I can confirm that the response you received was our data in full and we did not withhold any information. Upon review I can see that, the options within our standard response template to state whether a response has been provided in full, in part or withheld was not altered to appropriately reflect our response. I therefore apologise for this error and again provide our response to your request as follows:*
>
> *There were no Level 2 serious incidents relating to deaths reported during 2015 to 2019 for the Accident and Emergency Department.*

There were no de-escalation requests relating to serious incidents (deaths) reported during 2015 to 2019 for the Accident and Emergency Department.

10. The Trust noted at the end of its response that it believed it had responded to the Request in line with its obligations but that the Appellant had the right to ask for a "further" internal review or refer to the ICO. As is evident from the terms of its response, it referred only to Accident and Emergency incidents, not "*acute medician*" as referred to in the Request.

11. On 18 June 2022, the Appellant emailed the Trust as follows:

"F.O.I. request please. Serious Incidents level 2 deaths in Acute Medicine in 2016-2017-2018. And serious incident De-escalation Request Reports in Acute Medicine from 2015 to 2020. Thank you".

12. The Trust responded on 25 July 2022 as follows:

"There were no Serious Incidents level 2 deaths for Acute Medicine in 2016-2017-2018.

There were no level 1 Serious incident De-escalation Request Reports in Acute Medicine from 2015 to 2020."

13. The Appellant complained to the ICO on 3 August 2022. In summary he complained that there was wide-spread and deliberate under-reporting of various categories of incidents, including death and severe harm, by NHS Trusts.

14. The ICO responded on 20 August 2022, identifying that the Appellant had made two requests for information, one on 5 May 2022 (the Request), and one on 18 June 2022. He asked him whether he wished the ICO to consider the Trust's response to the Request (of 5 May 2022), indicating that he did not consider that the Appellant had exhausted the Trust's internal review process into the request of 18 June 2022. The Appellant responded on 2 September 2022, repeating his concerns about under-reporting generally but not responding to the ICO's specific observations on the internal review process.

15. It seems that the ICO proceeded on the basis that the Appellant's complaint related only to the Request (of 5 May 2022). On 9 September 2022, the ICO wrote to the Trust, requesting a copy of the Request because the Appellant had sent the Request to the Trust by post, and had not retained a copy. On 23 September 2022, the Trust sent to the ICO copies of its correspondence with the Appellant. On 11 October 2022, the ICO issued his Decision Notice.

Notice of Appeal and the ICO's Response

16. By his Notice of Appeal dated 4 November 2022, the Appellant stated that:

"*I didn't ask or request for A/E. I requested A/E and amergency* [sic] *or acute Med.*

Serious incidents Level 2 deaths in acute med 2016-2017-2018 Chesterfield. I sent ICO proof of this as you will see on the NRLS reporting and learning system for those years. There were no serious incidents death for acue [sic] *med in 2016-2017-2018. Please read.*

Who ever is sending level 1 incidents, they are not reported on STEITS there are millions of them every year they are classed as low harm. We strive to be transparent safety of staff takes precedent some request will be delayed.

They should have this information on their comp. Systems all at a click of a few buttons. ..."

17. On 20 December 2022, the ICO filed his Response to the appeal, applying to strike out the appeal under Rule 8(2)(a) and Rule 8(3)(c) of the Rules, alternatively seeking that the appeal should be dismissed, for the reasons given in the Decision Notice and the ICO's response. In summary, the ICO's position appears to be as follows:
    a. The Appellant has raised no discernible grounds of appeal or identified any error of law in the ICO's decision.
    b. While the Trust may have erred in not clarifying what the Appellant meant by "*acute medician*", the Appellant had the opportunity to clarify what he was asking for a number of times; he did not request a review of that party of his May 2022 request when he submitted his internal review request of 6 June 2022 nor did he request a further review upon receipt of the Trust's response of 9 June 2022.
    c. The ICO considers that the Appellant's request of 18 June 2022 is a separate request from the Request (of 5 May 2022); the Trust's response of 25 July 2022 to the request of 18 June 2022, confirming that there were no serious incident level 2 deaths and no de-escalation request reports in acute medicine for the period requested, renders what the ICO describes as "this part" of the appeal "academic";
    d. In relation to that part of the appeal concerning the Appellant's request relating to accident and emergency, the Trust has already responded to confirm that no information is held.
    e. The ICO considers that the Appellant's reference to having sent to the ICO material evidencing serious incidents level 2 deaths in acute medicine for the period 2016-2018 in the Trust is irrelevant as the Decision Notice under appeal is limited to accident and emergency figures referenced in the Request of 5 May 2022, and that the Tribunal's jurisdiction is limited under s58 of the Freedom of Information Act 200 ("FOIA) to the Decision Notice under appeal; if the Appellant wishes to challenge the Trust's response to his request of 18 June 2022 relating to acute medicine figures, then he should seek an internal review by the Trust and, if necessary thereafter, pursue a separate complaint to the ICO; the Decision Notice under appeal relates only to level 2 incidents (per the Request of 5 May 2022), not level 1 incidents;
    f. The issue for the Tribunal is not whether the Trust should hold the information requested but whether it held it at the time of the request; the ICO says that having considered all the information before him, he maintains on the balance of probabilities that the Trust held no information within the scope of the request and that the Trust has discharged its duty under s1(1) FOIA.

18. The Appellant filed a Reply with supporting documents on 16 January 2023. He did not engage directly with the ICO's position but maintained his concerns in relation to under-reporting. On 17 February 2023, the Registrar of the First Tier-Tribunal General Regulatory Chamber declined to strike out the appeal on the basis that it seemed to him that there was a triable issue as to whether or not the Trust held the information requested.

Applicable law

19. The relevant provision of FOIA is as follows:

1 General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2,9, 12 and 14.

(3) Where a public authority-
(a) reasonably requires further information in order to identify and locate the information requested, and
(b) has informed the applicant of that requirement,
the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

16 Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

…"

The hearing

20. The Appellant attended the hearing by telephone. The ICO did not attend. For the purposes of determining this appeal, we have considered all the material contained in the Hearing Bundle and the Appellant's oral submissions.

Discussion

21. It seems that the Appellant's request of 18 June 2022 (bearing the same reference number as was ascribed to the Request (of 5 May 2022) was intended to clarify that that part of the Request which had referred to "*acute medician*" had been intended to refer to "Acute Medicine". The ICO proceeded on the basis that the request and response for his consideration on complaint by the Appellant was that which formed only the first part of the Request, namely the serious incident figures for Accident and Emergency. To that end, the Decision Notice only addressed that aspect of the Request, that is to say, it did not address the Trust's response in relation to the serious incident figures for Acute Medicine.

22. The Appellant attached both to his correspondence with the ICO and to his Notice of Appeal, extracts from material published by NHS Improvement relating to the Trust, under the heading "*How to understand and improve your patient safety incident reporting to the National Reporting and Learning System (NLRS*)" for the following periods:
    a. April 2016 to September 2016 compared to April 2017 to September 2017.
    b. October 2016 – March 2017 compared to October 2017 to March 2018.
    c. April 2017 to September 2017 compared to April 2018 to September 2018.
    d. October 2017 – March 2018 compared to October 2018 to March 2019.
    e. April 2018 – September 2018 compared to April 2019 – September 2019
    f. October 2018 – March 2019 compared to October 2019 – March 2020.

23. In summary, the Appellant relies on these extracts to show that the Trust's reports of incidents across a range of degrees of harm ("None", Low", "Moderate", "Severe" and "Death"), but with particular focus on "Death" and "Severe", undermine its response to the Request that "*there were no Level 2 serious incidents relating to deaths reported during 2015 to 2019 for the Accident and Emergency Department"* and that "*there were no de-escalation requests relating to serious incidents (deaths) reported during 2015 to 2019 for the Accident and Emergency Department."*

24. We have reviewed all the extracts from the NLRS material we have described but confine ourselves to commenting in our decision on the extract for the period April 2017 to September 2017 compared to April 2018 to September 2018 ("the April 2017 NLRS Report"), as the Appellant had highlighted relevant parts of that material in his complaint to the Information Commissioner.

25. The April 2017 NLRS Report records this at its heading: "*Use this report and other relevant information to better understand the incidents you report to us and to ask if your incident reporting could be more effective in improving the safety of your patients. …*". It goes on to note that "*Evidence for potential for under-reporting and reporting rate are indirect indicators of potential problems with culture or reporting. They can be affected by many factors – for example, the services provided, populations served, and local safety issues and concerns. …*"

26. It contains the following:

a. A bar chart which demonstrates where the Trust falls in the given period on a spectrum of 'evidence or no evidence' of potential under-reporting of incidents, and where potential under-reporting should be investigated as a priority, prompting these questions: "*Are you under-reporting all incidents, or just deaths and severe harm? Is there scope of improve your safety culture?*". The bar chart reports no evidence of potential under-reporting by the Trust in the period of the April 2017 NLRS Report. We have noted that in none of the extracts of NLRS material in the bundle i.e. those covering different periods of time, was it shown that the Trust had potentially under-reported relevant incidents, although its position on the spectrum of 'no evidence' of potential under-reporting varied slightly across the periods.

b. A statement that, on average, 50% of the Trust's reports were submitted 27 days after the reported incident date: "*Please ensure incidents are reported as quickly as possible and at least every month.*"

c. Under a heading "*Are you improving the accuracy with which you report degree of harm?*", confirmation that:
    i. incidents in the period April 2018 to September 2018 categorised by Degree of Harm were recorded as follows: None: 1,799, Low: 322, Moderate: 75, Severe: 12 and Death: 4.
    ii. across April 2017 - September 2017 compared to April 2018 – September 2018, out of all the categories of "Degree of Harm" incidents reported as occurring:
        1. 0.75% were Severe in April – September 2017, and 0.5% were Severe in April – September 2018.
        2. 0.4% were Death in April – September 2017, and 0.25% were Death in April – September 2018.

d. Under a heading "A*ctions for your organisation*", the following questions:

"Is your death and severe harm reporting capturing all relevant Serious Incidents and Learning from Deaths reviews?

Are you confident that all 'no harm' incidents caused no patients harm?

Are you confident that all patients involved in incidents reporting as causing 'moderate harm' made a full recovery?

Does your death and severe harm re porting exclude incidents that do not meet the NLRS definitions?

If incidents have been reported with the wrong degree of harm, please refer to the guidance below."

e. Under a heading "*Do you understand your most frequently reported incident types?*", the Trust's most frequently reported incident types for April 2018 to September 2018 as follows:

   i. Incident type level 2:
      - slips, trips and falls: 22.7%
      - medication: 12.7%
      - treatment/procedure-delay/failure: 3.8%
      - patient incorrectly identified: 3.5%
      - unsafe/inappropriate clinical environment (including clinical waste): 1.9%.

   ii. Incident type level 1:
      - Patient accident: 24.3%
      - Treatment, procedure: 13.3%
      - Medication: 13.3%
      - Clinical assessment: 8.2%
      - Access, admission, transfer, discharge: 8.1%
      - Documentation: 7.1%
      - Implementation of care: 5.2%
      - Other categories: 4.2%
      - Infection control incident: 4.1%
      - Consent, communication, confidentiality: 1.8%.

f. Explanatory notes headed "*Useful information and links*", which explain that Level 2 type incidents recorded in the document were linked by arrows to the broader Level 1 incident group to which they belonged, to help the Trust focus on the most frequently reported issues where safety improvement was most needed. To that end, the Report shows *that* "*slips, trips and falls*" in Level 2 belonged to the category of "*patient accident*" in Level 1, "*medication*" in Level 2 belonged to the category of "*medication*" in Level 1, *"treatment/procedure-delay/failure*" in Level 2 belonged to the category of "t*reatment, procedure*" in Level 1, "*patient incorrectly identified*" in Level 2 belonged to the category of "*Documentation*" in Level 1, and "*unsafe/inappropriate clinical environment*" in Level 2 belonged to the category of "i*nfection control incident*" in Level 1. It is not clear to us whether the above incident types are the only incident types which fall into Incident Type level 1 or 2, or whether there are other incident types which fall into either category.

g. Next to the data of incident types, the following questions:

   "Do you understand what is being reported locally for these incident types?

   Are improvement efforts underway for all these safety issues?

Have you investigated your local incident type data to see if you can improve your reporting to us? It may be possible to reduce the proportion of incidents reported to the NRLS as 'Other'.

The top 5 level 2 incidents excludes 527 level 2 incidents categorised as 'Other', this represents 28.3% of incidents reported in April 2018 to September 2018."

h. The "*Useful information and links"* to the NLRS Report say:

"*Degree of harm: deaths and severe harms should be reported within two working days. The reported degree of harm should be the actual degree of harm, not the potential degree of harm. You can improve the accuracy of reporting degree of harm by, for example, ensuring that incidents are reported to the BRLS with a degree of harm of 'death' or 'sever harm' only where the patient safety incident resulted in death or sever harm and meets the NRLS definitions; cross-checking with other local information, such as Serious incidents reported under the Serious Incident framework and deaths reviewed under Learning From Deaths guidance can help ensure all relevant incidents are reported. Please remember to consider the differences in definitions and requirements between these frameworks and NLRS reporting. Taking a random sample of incidents reported as no/low/moderate harm and reviewing them against local records can ensure you do not take false reassurance from high proportions of incidents recorded as no harm or low harm, and help you identify incidents reported as moderate harm that should have been reported as severe harm."*

27. The data in the April 2017 NLRS Report does not distinguish between incidents occurring in Accident and Emergency and Acute Medicine.

28. The Appellant noted that for the period April 2018 to September 2018, there had been four reported Death Incidents within the Trust. He drew our attention to the extracts of NLRS material relating to the Trust for periods other than April 2018 to September 2018, which showed as reported:
    a. Eight deaths between April 2017 and September 2017
    b. Four deaths between October 2017 and March 2018
    c. Nine deaths between October 2018 and March 2019
    d. Two deaths between April 2019 and September 2019
    e. Three deaths between October 2019 to March 2020.

29. By the Request, the Appellant asked for:

"*serious incidents level 2 deaths in 2015-2016-017-2018-2019 please AE acute medician.*

How many serious incidents de-escalation request reports have they [sic] *been in 2015-2016-2017-2018-2019 in A/E acut med. (or delogged).*"

30. By its response, the Trust said that there were "*no Level 2 serious incidents relating to deaths reported during 2015 to 2019 for the Accident and Emergency Department*" and that there were no "*de-escalation requests relating to serious incidents (deaths) reported during 2015 for the Accident and Emergency Department.*"

31. We understood from the Appellant that "serious incidents" are "Severe" or "Death" incidents in the "degree of harm" categories we have already described as set out in the NLRS material. We had no material before us to establish that "Severe" or "Death" incidents constitute "serious incidents", a term used by both the Appellant in the Request and by the Trust in its response. We assume, however, that because the Trust adopted those words in its response as to the numbers of Deaths, it recognised that Death is a type of serious incident as an established term.

32. The Appellant submitted, by way of example, that the fact of the April 2017 NLRS Report's recording eight Death incidents and twelve Severe incidents in the period April 2018 to September 2018 alone, undermines the Trust's response that there were no Level 2 serious incidents relating to deaths reported during 2015 to 2019.

33. It is not clear to us that the data in the April 2017 NRLS Trust Report does, as the Appellant submits, indicate that the Trust's response in relation to number of deaths was necessarily wrong. The Trust's response was that were no *Level 2* (our emphasis) serious incidents of Death in the period reported on, so it may be that while there were four deaths in the period reported on (as shown in the April 2017 NLRS Report), they were not deaths of the incident type of Level 2.

34. However, there was no evidence before us that the ICO considered the Trust's responses to the Appellant as to the number of deaths, against the backdrop of the NLRS extracts which the Appellant had provided to the ICO and, specifically, the number of deaths indicated in that material; all that appears to have happened is that on 9 September 2022, the ICO asked the Trust for a copy of the Request; the Trust provided copies of their exchanges with the Appellant in May and June 2022, and the ICO produced his Decision Notice on 11 October 2022. In light of the NLRS material provided by the Appellant to the ICO, we do not consider that the ICO was entitled to conclude without more that, on the balance of probabilities, the information relating to deaths sought by the Request was not held by the Trust (as no such incidents occurred within the requested timeframe), and that the Trust had complied with its obligations under s 1(1) FOIA in this regard.

35. We had no submissions or evidence as to the meaning of a "de-escalation request relating to serious incidents (deaths)", which formed the second part of the Request. We were unable to discern whether, and, if so, how, the data in the NLRS material which the Appellant sent to the ICO might raise any question as to the accuracy of the Trust's response to that part of the Request. On that basis, we consider that the ICO was entitled to conclude, on the balance of probabilities, that that information was not held by the Trust (as no such incidents occurred

within the requested timeframe), and that the Trust had complied with its obligations under s1(1) FOIA in that regard.

36. We think that the Trust's handling of correspondence with the Appellant in June 2022 has created confusion. The Trust's response of 1 June 2022 addressed the Request only in relation to Accident and Emergency. It was silent as to the Request in relation to Acute Medicine. It is unfortunate that the response of 1 June 2022 contained the erroneous reference to the Trust holding/not holding/holding in part the information "*in the following format*" because that, quite understandably, stimulated the Appellant's email of 6 June 2022 asking "*So you hold this in a different format, De-logged, Severe harm, not death. What provision of the Act are you relying on. You must specify the exemption. Look forward to my vexatious request."* It appears that the Trust then regarded that as a request for an internal review of its response of 1 June 2022, and it emailed the Appellant on 9 June 2023, maintaining its position, but concluding confusingly, in our view, that the Appellant had the right to ask for a "further" internal review. The Appellant then emailed the Trust on 18 June 2022 asking "*FOI request please. Serious Incidents level 2 deaths in Acute Medicine in 2016-2017-2018. And serious incident De-escalation Request Reports in Acute Medicine from 2015 to 2020. Thank you."* It may be that he thought he was availing himself of a right to review the Trust's response of 1 June 2022 (specifically its failure to address the request in relation to Acute Medicine), or its response of 9 June 2022, but his 18 June 2022 request was, of course, a slightly different request in relation to Acute Medicine from that contained in the Request (of 5 May 2022); the latter requested information relating to Level 2 Deaths from 2015 to 2019, as opposed to 2016 to 2018, and information relating to de-escalation reports from 2015 to 2019, as opposed to 2015 to 2020. The Trust have responded to the 18 June 2022 request by their email of 25 July 2022. The ICO has noted that it remains open to the Appellant to seek an internal review of the Trust's response of 25 July 2022. We note that in its response of 25 July 2022, the Trust refers to Level 1, rather than Level 2, serious incident de-escalation request reports in Acute Medicine from 2015-2020), which does not seem to be part of the Appellant's request of 18 June 2022.

37. The position remains, however, that the Trust did not respond to that part of the Request (of 5 May 2022) which sought information in relation to Acute Medicine, and there is no explanation before us as to why that is. We think it is clear, and should have been clear to the Trust, that by his reference in the Request to "*acute medician",* the Appellant meant "Acute Medicine", in contradistinction to Accident and Emergency.

38. There was no material before us to indicate that in considering the Request, the Trust had regard to its duty to provide advice and assistance to the Appellant pursuant to s16(1) FOIA, or that the ICO considered that issue in reaching his decision. There is no reason why the Appellant should be expected to be familiar with s16 FOIA. We consider that the Trust should have clarified with the Appellant that the Request contained a request for information relating to incidents in Acute Medicine, and provided a response. We find that in this regard the Trust breached its obligations under s16(1) FOIA. We also find that the Trust failed to respond at all to that part of the Request (of 5 May 2022) seeking information relating to Acute Medicine. In that regard, we find that the Trust breached its obligations under s1(1)

FOIA. It makes no difference to that finding that the Trust has subsequently purported to answer the Appellant's 18 June 2022 request relating to Acute Medicine by its email of 25 July 2022, which would appear to overlap with the relevant part of the Request (of 5 May 2022).

39. Accordingly, we find that the ICO's Decision Notice is not in accordance with the law and the Appellant's appeal is allowed. We substitute the Decision Notice as follows:

Substituted Decision Notice:

The Chesterfield Royal Hospital NHS Trust ("the Trust") must, by no later than 4.00 p.m. on 05 February 2024:

a. **Send to the Appellant the number of serious incidents within Level 2 category (including "Death" but not excluding any other incident which the Trust categorises as a serious incident) occurring within Accident and Emergency and in Acute Medicine within the Trust in the calendar years 2015 to 2019 inclusive.**
b. **Send to the Appellant the number of de-escalation request reports in relation to any matter which the Trust categorises as a serious incident, which have been issued within Accident and Emergency and in Acute Medicine within the Trust in the calendar years 2015 to 2019 inclusive.**

Signed: *Judge Foss* Dated: 30 November 2023