IN THE FIRST-TIER TRIBUNAL **Case No.** EA/2015/0188
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS 50568265
Dated: 29 July 2015

Appellant:	**MEDICAL JUSTICE**
Respondent:	**INFORMATION COMMISSIONER**
Additional Party:	**THE HOME OFFICE**
Heard at:	**FIELD HOUSE AND COURT 64, ROYAL COURTS OF JUSTICE**
Dates of hearing:	**20 JANUARY 2016 AND 11 MAY 2016**
Date of decision:	**8 JUNE 2016**

Before

ROBIN CALLENDER SMITH
Judge

and

MICHAEL HAKE and JOHN RANDALL
Tribunal Members

Attendances:

For the Appellant: Ms Martha Spurrier (20 January 2016) and Mr Alex Gask (11 May 2016), Counsel instructed by Bhatt Murphy

For the Respondent: Mr Rupert Paines, Counsel instructed by Information Commissioner

For the Additional Party: Mr Robin Hopkins, Counsel instructed by the Government Legal Department

IN THE FIRST-TIER TRIBUNAL **Case No.** EA/2015/0188

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: FOIA 2000

Qualified exemptions

- **Health and safety s.38**

Cases: *Callus v IC* (EA/2013/0159)**,** *Hepple v IC* (EA/2013/0168), *Phillips v IC* EA/2012/0141), *BUAV v IC and Newcastle University* (EA/2010/0064), *Armstrong v IC and HMRC* (EA/2008/0026), *Department of Health v IC and Lewis* [20105] UKUT 0159 (AAC).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 29 July 2015.

SUBSTITUTED DECISION NOTICE

Dated: **9 JUNE 2016**

Public authority: **THE HOME OFFICE**

Name of Complainant: **MEDICAL JUSTICE**

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 29 July 2015. Within 35 days the Home Office is to disclose to the Appellant the information requested subject to any necessary redaction of personal data.

9 June 2016

Robin Callender Smith

Judge

REASONS FOR DECISION

Introduction

1. On 9 November 2012 a man who was being detained at Harmondsworth Immigration Centre (HIC) was taken to Harefield Hospital after he had become unwell.

2. He died on 17 November 2012.

3. During most of the period of this individual's treatment and surgery in hospital he remained handcuffed until a short time before his death.

4. The charity *Medical Justice* wanted to see a copy of the reports into what had happened in this case.

5. At the hearing on 20 January 2016, one of the reasons an adjournment was necessary was that it became apparent that there had been a Coroner's Inquest at the West London Coroner's Court on 15 October 2014 in respect of this individual's death.

6. This was an inquest that the Home Office had maintained had not occurred until shown late-gathered evidence by the Appellant at the hearing on 20 January 2016.

7. The purpose of that adjournment was to allow time for the Home Office to consider this additional evidence and its position in respect of the future progress of the issues involved.

8. The appeal hearing was resumed on 11 May 2016.

The request for information

9. On 22 October 2014 the following request was made on behalf of Medical Justice to the Home Office:

> The HMIP annual report mentions the death of a Harmondsworth detainee in November 2012. '*In another case at Harmsworth in November 2012, the detainee who was dying continue to be handcuffed while he was sedated and undergoing an angioplasty in hospital, although the handcuffs were removed before he died. The Home Offices professional standards unit has completed a critical investigation into the case.*' I request a copy of the PSU investigation and the PPO report in this case.

10. The Home Office responded on 3 December 2014 stating that the Prisons and Probation Ombudsman (PPO) had not investigated the case so there was no PPO report. It held the Professional Standards Unit (PSU) report but took the view that was exempt from disclosure under section 38 FOIA (the health and safety exemption). A Home Office review maintained that position on 21 January 2015.

The complaint to the Information Commissioner

11. The Information Commissioner (IC) reviewed the content of the PSU report.

12. The Home Office's position was that its reliance on section 38 (1) (a) FOIA was on the basis that it considered disclosure would be likely to endanger the physical or mental health of any individual.

13. This was because the PSU report contained a detailed account of the final hours and days of the deceased. That account had not been provided to the deceased's family and included details of which they might not be aware and which was likely to be distressing to them and endanger their mental health.

14. The IC concluded that:

(a) The report contained a very detailed account of the events leading up to the individual's death and contained information that would constitute sensitive personal data if the individual had been alive.

(b) Disclosure under FOIA was disclosure to the public at large. The surviving relatives of the individual could be distressed by release of that sensitive information into the public domain both because of the loss of privacy and becoming aware of the contents of the report.

(c) The psychological impact of disclosure of the majority of the report would go beyond mere stress or worry and would be likely to endanger the mental health of the individual surviving relatives.

(d) Those conclusions did not apply to the cover sheet the contents of the report, the executive summary, the terms of reference, methodology and recommendations. That information contained no such intrusive details but was an overview of the report, explaining the approach taken and comments more broadly made on applicable lessons to be learned. Disclosure of that part of the content would not be likely to cause the relevant danger under section 38 (1) (a). There was a particularly strong public interest in the disclosure of those parts of the report.

(e) The IC had considered the public interest test in relation to the remainder of the report. He took into account that:

(i) The relevant events were serious and generated significant public concern. There had been media coverage about the events, focusing on the "inappropriateness of a severely ill individual being restrained while hospitalised".

(ii) HM Chief Inspector of Prisons had issued a report on Harmondsworth IRC which referred to two occasions in which vulnerable/incapacitated detainees were "needlessly handcuffed

in an excessive and unacceptable manner", and described them as "shocking cases where a sense of humanity was lost".

(iii) There was also a public interest inherent in the exemption. Considering the content of the information, it seemed reasonable to assume that any relative would be severely distressed by disclosure of the information, despite the absence of specific evidence from the Home Office. That interest in protecting the relatives was "very significant".

(f) The IC considered that there was a strong public interest in disclosure of information about the investigation of an incident of such seriousness.

(g) However, it was highest for the sections of the report identified at (d) above. There was a lower public interest in the remainder of the report. Having weighed that public interest against the very significant public interest in protecting the relatives, the IC concluded that the public interest in maintaining the exemption outweighed that in disclosure.

Section 38 FOIA 2000

38 Health and safety.

(1) Information is exempt information if its disclosure under this Act would, or would be likely to—

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

The appeal to the Tribunal

15. From the Appellant's amended Grounds of appeal, filed on 23 October 2015, the following main points are summarised:

(1) Following Medical Justice's FOIA request for disclosure of the Home Office Professional Standards Unit (PSU) Report, on 29 July 2015 the IC partly upheld this complaint and ordered the Home Office to disclose parts of it within 35 days.

(2) The appeal relates to those parts which still remain the subject of the section 38 exemption on the basis that disclosure of the withheld information would be likely to endanger the mental health of the family of the deceased individual referred to in the request.

(3) No evidence had been provided about the family's wishes. Where disclosure of itself could endanger the families mental health if sensitive personal information about the deceased was made known to the public inappropriately then that risk could be managed by redaction.

(4) The Home Office had argued that the public interest in disclosure was reduced because it had already changed its practice following the incident. Against this, it was argued that the public interest in being able to hold the Home Office to account existed and also that other organisations may need to learn lessons from the incident such as the hospital where the incident occurred.

(5) Medical Justice performed the function of a social watchdog in this area and had a right under Article 10 (1) ECHR to access information of public concern from the Home Office. Although the right to access information was qualified it was sought in the context that Medical Justice sought the information because of the concern that the State's compliance with its human rights obligations was at issue.

The questions for the Tribunal

16. Is section 38 (1) (a) engaged?

17. If it is engaged, does the balancing of the public interest element in this qualified exemption favour maintaining the exemption or ordering disclosure?

Evidence

18. The Tribunal heard submissions in open court and in closed session as well as considering open and closed material, including witness statements and the withheld information itself.

19. The Tribunal adopted the guidance for the approach to be taken by courts and tribunals in respect of any closed material procedure set out immediately below.

20. In *Bank Mellat v HMT (no.1)* [2013] UKSC 38, which was not a case about FOIA, Lord Neuberger said at paragraphs 68-74 that:

> i) If closed material is necessary, the parties should try to minimise the extent of any closed hearing.
>
> ii) If there is a closed hearing, the lawyers representing the party relying on the closed material should give the excluded party as much information as possible about the closed documents relied on.
>
> iii) Where open and closed judgments are given, it is highly desirable that in the open judgment the judge/Tribunal (i) identifies every conclusion in the open judgment reached in whole or in part in the light of points made or evidence referred to in the closed judgment and (ii) says that this is what they have done.
>
> iv) A judge/Tribunal who has relied on closed material in a closed judgment should say in the open judgment as much as can properly be said about the closed material relied on. Any party excluded from the closed hearing should know as much as possible about the court's reasoning, and the evidence and the arguments it has received.

21. In *Browning v Information Commissioner and Department for Business, Innovation and Skills* [2013] UKUT 0236 (AAC) the Upper Tribunal issued similar guidance about the use of closed material and hearings in FOIA cases, noting that such practices are likely to be unavoidable in resolving disputes in this context:

i) FOIA appeals are unlike criminal or other civil proceedings. The Tribunal's function is investigative, i.e. it is not concerned with the resolution of an adversarial civil case based on competing interests.

ii) Closed procedures may therefore be necessary, for consideration not only of the disputed material itself, but also of supporting evidence which itself attracts similar sensitivities.

iii) Parliament did not intend disproportionate satellite litigation to arise from the use of closed procedures in FOIA cases.

iv) Tribunals should take into account the Practice Note on Closed Material in Information Rights Cases (issued in May 2012). They should follow it or explain why they have decided not to do so.

v) Throughout the proceedings, the Tribunal must keep under review whether information about closed material should be provided to an excluded party.

22. The closed bundle in this appeal contained the disputed information. It was necessary for the Tribunal to see this and consider the redacted elements of it when set against the Open material before reaching its conclusions.

23. The Tribunal has considered carefully and rigorously the material in the light of the Appellant's points and concerns already expressed in the notice of appeal and in its other representations and submissions.

24. Consideration of the Closed Material, however, while helpful and informative, has not materially influenced the Tribunal's decision save to confirm its view that the section 38 FOIA exemption relied on by the Commissioner and the Home Office is not engaged on the specific facts of this case.

25. On that basis the Tribunal has not felt it necessary to provide a Closed Annex for its reasoning because the reasons themselves are on the face of its Open decision.

26. The decision itself is that the disputed information should be disclosed to the Appellant which is what will happen, subject to any appeal.

Email evidence from HM Senior Coroner for West London

27. The Tribunal has considered email evidence dated 19 January 2016 in respect of the inquest conducted into the deceased individual provided by HM Senior Coroner for West London, Chinyere Inyama.

28. In that email, to the Appellant's Solicitors, which included a copy of the Post Mortem report he states:

> So, the information before me was that the deceased was admitted to hospital whilst detained and released from that detention and granted temporary stay towards the latter stages of his hospital stay. In the circumstances of a person's detention, the coroner will rely on the PPO to prepare a report which then informs the coroner's view of [the] scope of [the] inquest and provisional witness list. The PPO informed my office that they had no mandatory remit to investigate and would not exercise their discretion to do so because the lack of 'sufficient resources'. I was not made aware of any Home Office PSU review. My view is that I should have been made aware of this. For example it would have alerted me to the fact that the death of the second detainee shortly after release from detention who had recently undergone treatment at Harefield. Although the report of the treating cardiologist states there was restraint prior to arrival and that restraint was on-going there did not seem to be any issues causative of the death from the restraint. The post-mortem report made it clear that significant natural disease explained the death. The document attached led me to the approach that this was a straightforward inquest, without any causative contentious issues, that could be dealt with by way of documents alone.
>
> I can add that I have recently conducted an inquest into the death of an elderly Canadian national at Harmsworth within the same year as [the deceased individual subject of this appeal]. At that inquest I heard evidence of a significant revamp of protocols for risk assessment of the need for restraint measures in the circumstances, use of GPs in the health care wing and joint working with security officers at the detention centre and the caseworkers to review detainee's fitness for detention and act quickly on concerns about that fitness. I also learned of the practical set up and use of 'closet chains' as a restraint tool for detainees and hospitals. I am satisfied that the same set of circumstances surrounding the death of [the deceased individual] would not be repeated now.

Emails from the widow of the deceased individual

29. There was also an email from the widow of the deceased individual sent to the Home Office 3 May 2016. This is headed **My late husband report** and states (exactly as written):

> I am writing regarding my late husband report, I am not sure about sharing my late husband report after discussing with my sons, for time being we do not wish to share the report with medical justice, or any other party's.

30. This email resulted from two lines of approach to the widow of the deceased individual. One line of approach had been from Medical Justice itself via the wife's MP. The other came from the Home Office.

31. This led to an email from the widow [addressed to Mr Alan Gibson, Head of Operations, Detention Service, Immigration Enforcement at the Home Office whose two written witness statements were also part of the evidence considered by the Tribunal] dated 10 March 2016 suggesting, in terms, that she might decide to allow Medical Justice to have a copy of the report without her late husband's name and other relevant identification details being disclosed.

32. When Medical Justice became aware of that email it invited the Home Office to provide it with a copy of the PSU report minus the deceased's name, date of birth, any family address, Home Office or other reference numbers relating to him and his family and any pictures of him redacted. Redactions would apply to any names or personal details of staff members.

33. That invitation to the Home Office came in an email from the Appellant's solicitors dated 10 March 2016. It also contained the final sentence:

> Upon receipt of the report with these redactions, Medical Justice will consider withdrawing its appeal.

34. In the event, the 3 May 2016 email (detailed in paragraph 35 above) was then received by Mr Gibson at the Home Office and the appeal hearing that then took place on 11 May 2016 progressed.

35. No further emails had been received from the widow by the time of the hearing.

36. The evidential detail of these emails has been included because:

- Counsel for the Home Office emphasised on 11 May 2016 that it was not the Home Office's position that it was seeking to use the exemption to hide anything from public view given that there was a great deal of basic detail about this matter already disclosed and in the public domain.

- Equally, Counsel for the Appellant emphasised that if the wishes of the widow in terms of the exemption itself had been clear then it would have withdrawn its appeal.

Legal submissions and analysis

37. **The Information Commissioner's position**:

(1) The Commissioner urged the Tribunal to consider both the content of the disputed information and the implications of its disclosure when assessing the likelihood physical or mental injury. These two elements could not be divorced from each other.

(2) The Tribunal was entitled to draw inferences from the content of the disputed information and to take a common sense view.

(3) There had been a strong statement by the widow, who had viewed the report, that she and her sons would not want disclosure to take place.

While that was not direct evidence of a risk to mental health, it was evidence from which the Tribunal – bearing in mind the sensitivity of the subject matter and the personal nature of the events described in the report – could fairly and properly infer a risk to mental health if disclosure contrary to those wishes took place. That risk to mental health would arise as a result of the disclosure to the world of the sensitive material contained in the report.

(4) It should not be thought that, because the widow and her sons have now read the full report, that in some way diminishes the case in favour of the maintenance of the exemption. The Tribunal had to deal with the factual position at the time of the response to the request (3 December 2014). At that date the family had not read the report. The widow's position now was relied on by the Commissioner as an expression of what her reaction would have been if the report had been disclosed to the world by the Home Office in 2014.

(5) The case of *Phillips v IC* (EA/2012/0141) did not assist the Appellant. That case related to an application for a file in the National Archives relating to an individual who had been convicted and executed for murder in 1952. His conviction had been posthumously quashed in 1998 and the request had been made in 2011, almost 60 years after the relevant events. That was in stark contrast to the facts in this appeal.

(6) Also, in the *Phillips'* case there had been repeated detailed publication of the salient details of the trial and publication of a significant part of the withheld information including a full trial transcript.

(7) In terms of any argument that the family of the deceased would already be aware of the salient and distressing facts that was illogical and incorrect. The Appellant had not had sight of the disputed information and it continued to be the Commissioner's considered view that disclosure of that material would be likely to cause mental injury.

(8) In terms of the public interest it was not disputed that there was a public interest in the disclosure of the disputed information in terms of holding to account and learning lessons from the case. That interest had been substantially met by the disclosure of the elements of the reports already. In addition very weighty countervailing considerations were required to outweigh the identified risk to mental health highlighted in *BUAV v IC and Newcastle University* (EA/2010/0064) at [53].

(9) Assertions had been made that the Home Office "may" have breached Articles 2 and 3 ECHR and that those potential breaches weighed in the public interest for the disclosure of material. The Tribunal had no jurisdiction to consider whether or not ECHR rights had been infringed and, if there had been a breach of the HRA, it was open to the Appellant to institute Judicial Review proceedings in respect of those.

(10) In terms of the inquest, the investigation began in November 2012 and the hearing was not held until 15 October 2014. The fact that there had been an inquest appeared to have come as a surprise to all parties. Mr Gibson, on behalf of the Home Office, had made his enquiries and it was clear that the coroner had not informed the Home Office of the inquest or made any enquiries as to its position. Had the Coroner requested the PSU report he would have been provided with the redacted version, an un-redacted version would only have been provided on a confidential basis.

38. The Home Office's Position

(1) The Home Office adopted and concurred with the Commissioner's position (set out as above).

(2) In terms of the engagement of section 38 and the potential distress and worry caused to the widow if the withheld information was made public, the point of engagement was not a "very high hurdle" as a legal

requirement but rather that there was “a real risk” of the disclosure causing mental or physical illness.

(3) However it was conceded that there must be a significant risk that disclosure would cause a significant level of distress so that an individual’s mental health is worse off as a result. The Home Office would not have continued with the appeal unless it believed that was the case. Bereaved relatives facing distressed circumstances were likely to fall into the above category.

Conclusion and remedy

39. The Tribunal, on the facts of this case, is not persuaded that section 38 (1) (a) is engaged at all.

40. However, in addition to setting out below the reasons for arriving at this primary conclusion, it has also considered what would have been its decision if the section had been engaged in respect of the public interest balancing exercise.

41. The Tribunal concludes that, even if the exemption had been engaged, that balancing exercise would have fallen in favour of disclosure of the withheld information rather than withholding it.

Section 38 (1) (a) not engaged

42. As has been stated, the exemption within that section of FOIA provides that information is exempt if its disclosure “would, or would be likely to endanger the physical or mental health of any individual”.

43. Mere distress falls short of this. We reminded ourselves that the operative time for consideration of the engagement of the section is at the time of

the request That was 3 December 2014. At that date the family had not read the report and no comments about it had been made by them.

44. Looking at the email response nearly two years later from the widow, she states that she is "not to[o] sure about sharing my late husband ['s] report after discussing with my sons, for [the] time been [being] we do not wish to share the report with medical justice, or any other party's [parties]".

45. In our view there is nothing in the words of this response to indicate that, on the face of it them, disclosure of the report in and of itself - subject to appropriate personal data redactions – would, in 3 December 2014 or now, be likely to endanger either her physical or mental health or that of her sons (or any other relatives).

46. This response, we find, is in essence only an expression of her wishes and those of her family. She is clearly uncertain about exactly what she wishes at the moment and she states that she has discussed the issue with her sons. *For the time being* [emphasis added] they do not wish to share the report with Medical Justice or anyone else.

47. That, with respect, is not the issue. The issue is whether disclosure of the report would be likely to endanger her or her family's physical or mental health. Her response comes nowhere near to suggesting that is even a possibility.

48. There is, in addition, an additional comment to be made in respect of the procedure used to find out her views and relay them to the Tribunal.

49. While, in certain circumstances, a clear and direct response with reasons – or objective evidence – about why an individual's physical or mental health might be put at risk as a result of the revelation of the information contained in material for which the section 38 (1) (a) exemption is being claimed, the process presented to the Tribunal here amounts to little more

than a “vetoing” process that, in its own terms, does not engage the exemption within the section.

50. The Tribunal appreciates that there will be many situations where the relatives of deceased individuals would prefer that the sensitive personal data is not revealed to the public at large by any FOIA disclosure.

51. However, unless the provisions of section 38 are properly engaged in the first place – or unless there are other FOIA exemptions or Data Protection Act 1998 provisions and principles which operate in relation to the requested information – there is a real danger that a low-level, personal, “vetoing” power becomes entrenched in erosive fashion in legislation which fundamentally relates to freedom of information.

52. The reality is that any investigation into a death may cause a measure of distress to the loved ones of the deceased. This has to be balanced at personal level by the usual human desire to know what happened and, at a public level, by the need to establish in an open manner what happened so that appropriate preventive measures can be taken.

53. The Tribunal notes that the Home Office, in its own internal review of the original request dated 21 January 2015, there is the statement, at Paragraph 11 (Open Bundle, page 99) which, to give it its full context, is quoted below with the two following Paragraphs at 12 and 13 to avoid any suggestion of selective quoting or “cherry picking”:

> We are aware that the deceased has a number of living relatives who reside in the UK. Releasing the report, which includes details of the deceased’s personal life, medical history, as well as their last hours before they died, *would cause a reasonable amount of distress* [emphasis added] to the deceased’s living relatives [11].
>
> I have considered whether a redacted version of the report could be provided, however I have concluded that this would not be feasible. As there has only been one incident of this kind reported, it would be possible for the deceased’s relatives to identify that the report relates to a member of their family [12].

> As the report includes a vast amount of personal information of the deceased, it would not be enough to only redact the names of those who are identified in the report. As I mentioned previously, details of the deceased's personal life, their medical history and their last hours would be in the public domain. This disclosure would bring distress, therefore endangering the mental health of the living relatives, at a time when they need privacy for grieving [13].

54. The assessment in the quotation at Paragraph 11 above describes an event falling well short of necessarily endangering mental health.

55. That was the Home Offices starting position on its own internal review.

56. Obviously any death of a relative is likely to cause distress and any death in the circumstances which obtained in respect of this deceased is likely to cause distress as well.

57. To read across from the generalised distress created from such circumstances into a danger to relatives' mental health seems to the Tribunal a move too far in the context of this particular case.

58. Simply placing information in the public domain that some may find distressing seems to the Tribunal to be insufficient to engage section 38 (1) (a).

59. The Tribunal finds some assistance in the first test in *Hepple* (albeit only at First Tier Tribunal level) [on which Tribunal Member John Randall sat], which was that it is necessary to go beyond the potentially distressing nature of the information to the specific risk. In *Hepple* the individual seeking certain information had harassed an individual via threatening text messages. There was a specific threat of information being used to harass further an individual whose mental health was already subject to medical attention.

60. In contrast, there is no evidence or suggestion that the withheld information in this case would be used to harass anyone.

61. The second test in *Hepple* was that the direct effect on mental health should extend beyond mere stress and worry and should be real and not insignificant.

62. In this case the actual effect is a matter of speculation and, even looking at the most recent communications from the widow, there is no evidence suggesting that the effect is real and significant.

63. The Tribunal finds some assistance (albeit only at First Tier Tribunal level) from what its colleagues observed in *BUAV v IC and Newcastle University*.

64. The issue there concerned the possibility that release of information about experiments on non-human primates might be used by animal rights activists to endanger the health and safety of academics.

65. The starting point of the analysis in that case, at Paragraph 18, states:

> …. considering the statutory purpose of freedom of information, balanced by exemptions, we are not persuaded that it would be right to read the word 'in danger' in a sense which would engage the exception merely because of the risk. A risk is not the same as a specific danger.

66. In short, the Tribunal is not persuaded on the facts of this appeal that harm, over and above mere distress (and we do not use that phrase to suggest that callousness has entered our reasoning) would flow logically from disclosure of the withheld information.

67. We find on the balance of probabilities and for the reasons set out above that section 38 (1) (a) is not engaged.

The Public Interest Favouring Disclosure

68. If the Tribunal had found that section 38 FOIA was engaged then there are three significant public interest reasons which it would have weighed in the balance and found to favour disclosure of the withheld information.

69. Firstly, the undisclosed parts of the report add significant value and context to the rather bland nature of the recommendations which had been disclosed already.

70. Secondly, the death of any detainee in the custody of the State is a serious matter that should be the subject of proper enquiry.

71. In this case there was no PPO report due to a technicality and lack of resources. The technicality is that, by the time the individual died, he was no longer detained.

72. However his release from detention came a matter of hours before his death and, at all material times, in terms of his treatment, he was in detention.

73. The PPO declined to investigate on the strength of this technicality because it lacked the resources.

74. If the PPO had reported then that report would have been published.

75. The report of the PSU investigation, in these circumstances, stands in the shoes PPO investigation that never took place.

76. Thirdly, the issue of when it is appropriate for medical staff to require the removal of restraints goes beyond a single hospital and may be an issue that should be addressed by the wider medical community and by the General Medical Council as a regulator.

77. The Tribunal appreciates that issue and the information surrounding it does not necessarily have to spring from a FOIA request but it does avoid the issue being overlooked more generally.

78. Subject to the appropriate Data Protection Act 1998 redactions, the withheld information should be disclosed to Medical Justice.

79. Our decision is unanimous.

80. There is no order as to costs.

Robin Callender Smith
Judge
9 June 2016
Adjusted 29 June 2016