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Date: 25 October 2022
Our ref: K: FOI/Ref: 2022-000234
Email: nss.pcf-foi@nhs.scot

Dear [REDACTED]

Freedom of Information Reference: FOI-2022-000234 – WPATH Document

I refer to your freedom of information request that we received on 28 September 2022. I can advise you that we have now completed the search of our records and can provide you with the following information:

Under the Freedom of Information Act, I would like to request information about the investigation held by NHS NSS into the publication of a document written by the World Professional Association for Transgender Health on an NHS website.

The document I am referring to was removed from the website on June 15, 2022.

Could you provide me with:

- **A full copy of any report related to the investigation and its findings/recommendations**

Please find attached the investigation report, Appendix 1 – Executive Management Team (EMT) Investigation report recommendations for improvement.

Please also find attached the action notes from a meeting held by EMT, Appendix 2 - EMT22158 EMT Action Notes_DRAFT 20.9.22. Please note that these are only a draft of the action notes which are yet to be approved and distributed around the relevant staff. The section of the action notes which relates to this investigation is on Page 2, item 2.4. In line with [Section 33 \(1\) \(b\) of the Freedom of Information Scotland Act, 2002](#) we have decided to withhold any information that would be considered commercially insensitive as its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).



Headquarters

Gyle Square, 1 South Gyle Crescent, EDINBURGH EH12 9EB

Chairperson Keith Redpath
Chief Executive Mary Morgan

A copy of any NSS response to the recommendation and findings, e.g whether you accept its findings and what actions will be taken

Please find attached NHS National Services Scotland (NSS) response to the recommendations/findings from the EMT Report, Appendix 3 - NGICNS website adverse event review report v2

- **The terms of reference of the investigation and its scope**

The terms of reference/remit of the investigation can be found in section 2 of Appendix 3 - NGICNS website adverse event review report v2.

The scope/methodology of the investigation can be found in section 3 of Appendix 3 - NGICNS website adverse event review report v2.

Please also find attached Appendix 4 - NSS Adverse Event Policy V3 and Appendix 5 - NSS Adverse Event Procedure v1, which highlights the way NSS deal with the occurrence of an adverse event, such as the one in question.

- **Information about who, or what bodies, carried out the investigation. (If you cannot provide a name please provide as much information without making the individual identifiable - e.g their department, job title if this is a common role, pay grade, etc)**

An investigation was carried out internally by an independent manager within another SBU in NSS, however we would not be able to provide any individuals' details in line with [Section 39\(1\) of the Freedom of Information \(Scotland\) Act 2002 for "Health and Safety"](#) as disclosure would, or would be "likely" to, endanger an individual's health or safety.

- **Any correspondence between NSS and the Scottish Government related to the investigation.**

Please see the following attachments which have correspondence between NSS and the Scottish Government, with relation to the investigation:

Appendix 6 - RE IMMEDIATE - First Minister's Questions - NHS Scotland hosts document linking to site

Appendix 7 - RE media query - WPATH guidance - Telegraph_

NSS have redacted all names and job titles of staff listed in the above documents in line with [Section 39\(1\) of the Freedom of Information \(Scotland\) Act 2002 for "Health and Safety"](#).

Redactions have been made in order to protect the health and safety of NHS staff working in such a sensitive environment. NSS have deemed that the health and safety of NHS staff is paramount.

A number of considerations have to be made before the exemption can be applied:

- disclosure would, or would be "likely" to, endanger an individual's health or safety,
- disclosure would result in danger to physical health, e.g. danger to someone as a result of physical injury, illness or disease. It could also mean damaging someone's mental health as a result of the release of information,

Within NHS Scotland there has already been instances of staff members being targeted directly by protest groups. Therefore, it would be more than "likely" that release of names and job titles would

endanger an individual's health and safety. NSS have deemed that further targeting of staff would be probable.

The final stage of applying this exemption is the consideration of the [Public Interest Test](#). The Freedom of Information (Scotland) Act 2002 does not define the public interest. It has been described elsewhere as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been described as "something that is "in the interest of the public", not merely "of interest to the public." In other words, it serves the interests of the public.

In weighing up the Public Interest Test NSS recognises that there is always a public interest in Scottish public authorities operating in an open and transparent manner, however on this occasion NSS has considered that there is absolutely no public interest in endangering the health and safety of NHS staff working in the area of transgender healthcare.

I trust you will find the information of assistance and if you require any further information, please do not hesitate to contact me.

If you are unhappy with any aspect of how we have dealt with your request, you can make representations to us asking us to review the handling of your request. Please write to the

Head of Information and Cyber Security
Digital and Security
NHS National Services Scotland
Headquarters
Gyle Square
1 South Gyle Crescent
Edinburgh
EH12 9EB

or at the email address nss.foi@nhs.scot within 40 working days of the date of this correspondence.

If after a review you are still unhappy, you also have the right to apply to the Scottish Information Commissioner, who can be contacted at Kinburn Castle, St Andrews, Fife, KY16 9DS, or via their online application form.

If you have any queries about this letter, please contact me at the above address.

Yours sincerely

