



# Patient confidentiality

A briefing from our Information Governance team - April 2012

## Patient confidentiality

**R (on the application of TA) v North East London NHS [2011] EWCA Civ 1529**

### Facts

- Mr TA was involved in family proceedings with his wife, W. W had been granted custody of their child.
- A report had been prepared by a consultant psychiatrist (X) on W.
- Mr TA sought an investigation into the circumstances of the report and an explanation of how X could have reached conclusions which were apparently at variance with those of other medical experts.
- The NHS Trust considered that in order to properly investigate the complaint they would require access to the complete medical records of W.
- W refused to give her consent.
- The NHS Trust refused to investigate the complaint on the basis that in order to do so it would need access to W's medical records; W's consent was not forthcoming and so the Trust would be in breach of the Data Protection Act 1998 if it were to carry out the investigation. This refusal to investigate is the decision upon which Mr TA sought judicial review.

### Mr TA's argument

Section 35 of the Data Protection Act 1998 provides an exception to the non-disclosure of personal data provisions of the Act where disclosure is required by or under any enactment.

Mr TA contended that the Trust has a statutory duty to investigate the complaint under The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

It was argued that by virtue of that statutory duty to investigate complaints, the Trust has an implied power to enable it to carry out its duties, which satisfies section 35(1) of the DPA 1998.

### Conclusions of the Court

Any power to disclose records as sensitive and confidential as medical records without the consent of the patient must be expressly stated; it cannot be implied. The 2009 Regulations did not expressly allow the NHS Trust access to a patient's medical records without that patient's consent when investigating a complaint.

Therefore, the NHS Trust's decision not to investigate the complaint was not unlawful.

The case emphasises the importance of patient confidentiality under the DPA 1998 and the narrow scope of the exception to non-disclosure under s35 of the 1998 Act.

For more information about this or any other query relating to Data Protection or Freedom of Information, please contact Heledd Lloyd-Jones.



**Heledd Lloyd-Jones, Senior Associate**

T: 029 2038 5914

E: [heledd.lloyd-jones@morgan-cole.com](mailto:heledd.lloyd-jones@morgan-cole.com)

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