



## CURE THE NHS

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Precedent letter – re objections to secretly recorded meetings.

N.B these are not recommended – often better to openly suggest upfront that the meeting is openly recorded. There is no logical reason why the Trust/other organisation should object.

Dear x

Thank you for your email of (date). As you see, I am copying in my response to all parties copied to yours.

My apologies for any misunderstanding. I'm sure that you can understand that dealing with obdurate and evasive NHS personnel for some years has been very stressful. Accordingly, it is not always easy to maintain an objective viewpoint. You'll be aware however of your own organisation's corporate policy to extend advice and support to complainants as well as to provide a user friendly service. I would suggest that your role should be in re-establishing trust rather than by refusing any further direct contact with me.

I'm also confused as to how the tenor of your response fits with the obligation on the public sector to promote openness, accountability and transparency.

I do need to take up your allegation that *"I have consulted with our legal team and again you may be guilty of breaching the Data Protection Act if all participants were not aware that you were recording them. If (Trust/organisation) had recorded the meeting and not informed you then you would justifiably have taken us to task."*

My understanding of the *Data Protection Act* issues is that secretly recording a meeting is not necessarily in itself in breach of the *Data Protection Act* provisions. In this case, the audio recorded information related directly to the complaints raised with your organisation. It was made solely for the purpose of ensuring an accurate record of the meeting, regrettably felt to be necessary by me in light of past experience with other NHS organisations.

Also, it appears to me also potentially to fall under the s36 exemption, in that it is directly related to my family affairs.

It was proportionate to record the meeting. The minutes of the meeting will be in the public domain. This was not a private meeting and everyone present was fully aware that the content of the meeting would be recorded in one form or another. I'd therefore suggest to you that the information was collected and used fairly by me. Whether the content of the meeting was recorded in the form of minutes or in the form of an audio recording appears negligible. Moreover, the content of the audio recording is invariably more accurate.

I'd also draw an analogy with the fact that material acquired for journalistic, artistic or literary purposes is exempt from the DPA. Moreover, secret recording can be justified on the grounds of public interest, or where it is necessary for evidential reasons or where it can be shown that an open approach was unlikely to succeed. So it is wrong to imply that all secret recordings are illegal. You actually need to name the grounds on which you are alleging that my actions breached the Act, especially as you have put this suggestion into wide circulation.

I'd suggest that it is fair to say that the most likely advice that your legal team gave to you actually was that although prima facie a secret recording might amount to a breach of the DPA, in this case it was most unlikely to do so.

In any event, please disclose their advice to me under the Data Protection Act. I am the data subject and require access. I'm sure in the circumstances you would want this advice to be in the public domain. In any event, as I understand it, legal privilege will not attach to it unless (a) the documents were created with the dominant purpose of being used in current or potential litigation, which obviously is not applicable here; or (b) the document was brought into being in order to obtain legal advice from a barrister or solicitor. Views and correspondence on a legal or potentially legal situation from anyone who is not a solicitor or barrister do not attract legal professional privilege. So if you wish to claim that legal privilege applies on the latter grounds, please name the lawyer who gave the advice so that I can confirm with the Law Society or Bar Council that s/he is in fact qualified.

Public interest immunity also cannot apply, as it is in the public interest that such apparently incorrect advice is put into the public domain.

As regards your implicit suggestion that I may have breached the privacy of the persons whose names were not redacted from the minutes circulated by me: as I understand it Article 8 can only be enforced against public authorities. So I have no idea why anyone who objects to information being circulated should be referred to me.

I'm also having some difficulty in understanding why their names should not be in the public domain, and would appreciate it if you could explain this to me, so that I can ensure that there is no future issue. Have they actually insisted on this themselves? If so, on what grounds?

In closing, I do not accept that you are entitled to refuse me access to further direct contact with your organisation. It may be your preference that meetings are not recorded, but you do not seem to have any proper legal basis for insisting on this.

I apologise that my past experience has led me to use methods of accurately recording information that you personally find unacceptable. I'd suggest that future meetings are openly recorded, and then any such further misunderstandings can be avoided.

Yours etc