

3 August 2017

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By email

Dear

### **Request under the Freedom of Information Act 2000 (the “FOI Act”)**

I refer to your email of **6 July 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

### **Your request**

You made the following request (the numbering has been inserted by NHS Improvement for ease of reference):

- 1) *“Please confirm or deny if NHS Improvement hold any plans submitted by NHS bodies as part of the capped expenditure process.*

*If confirm, please release any plans submitted to NHS England and/ or NHS Improvement by the 14 areas identified as part of the capped expenditure process.”*

- 2) *“Please confirm or deny if NHS Improvement hold figures on the spend on external consultants as part of the capped expenditure process.*

*If confirm, please release the external consultancy expenditure for each of the 14 areas in the capped expenditure process in the 2016/17 and 2017/18 (to date) financial years.”*

- 3) *“Please confirm or deny if NHS Improvement hold any reports, documents, recommendations and / or communications produced by external consultants as part of the capped expenditure process.*

*If confirm, please release all reports, documents, recommendations and / or communications produced by external consultants as part of the capped expenditure process.”*

- 4) *“Please confirm or deny if NHS Improvement hold any impact assessments undertaken as part of the capped expenditure process.*

*If confirm, please release all impact assessments undertaken as part of the capped expenditure process, including on a) patient safety b) financial performance of statutory NHS bodies c) NHS standards and obligations as set out in the NHS Constitution and Mandate.”*

- 5) *“Please confirm or deny if NHS Improvement hold any communications relating to the capped expenditure process between NHS Improvement and statutory NHS bodies.*

*If confirm, please release all communications relating to the capped expenditure process between NHS Improvement and statutory NHS bodies.”*

- 6) *“Please confirm or deny if NHS Improvement hold any written communications which are not currently in the public domain between NHS England and NHS Improvement on the capped expenditure process.*

*If confirm, please release all written communications between NHS England and NHS Improvement on the capped expenditure process which are not currently in the public domain.”*

- 7) *“Please confirm or deny if NHS Improvement hold any written communications between NHS Improvement and the Department of Health on the capped expenditure process.*

*If confirm, please release all written communications between NHS Improvement and the Department of Health on the capped expenditure process.”*

- 8) *“Please confirm or deny if NHS Improvement hold information on any cases where NHS Improvement has directed an NHS organisation to reduce clinical activity to reduce expenditure in a) England, b) the 14 areas identified as part of the capped expenditure process.*

*If confirm a), please release (i) the level of savings generated in the financial years 2016/17 and 2017/18 to date by reducing clinical activity in England (ii) the level of savings forecasted in the total 2017/18 financial year from reducing clinical activity in England.*

*If confirm b), (i) the level of savings generated in the financial years 2016/17 and 2017/18 to date by reducing clinical activity in each of the 14 areas covered by the capped expenditure process (ii) the level of savings forecasted in the 2017/18 financial year from reducing clinical activity in each of the 14 areas covered by the capped expenditure process.”*

- 9) *“Please confirm or deny if NHS Improvement has ever sanctioned an NHS organisation for introducing a clinically unjustified treatment threshold or “arbitrary cutoff” as a cost saving initiative.*

*If confirm, please release any examples of NHS Improvement sanctioning an NHS organisation for introducing thresholds or “arbitrary cutoffs” as a cost saving initiative.”*

*10) Please confirm or deny if NHS Improvement holds any advice, legal or otherwise, on the use of the following measures by NHS organisations as part of ongoing cost saving initiatives:*

- a. Restrictions on patient choice*
- b. Introduction of treatment thresholds*
- c. Restrictions on prescribing*
- d. Cessation of discretionary funding*
- e. Reductions in planned clinical activity*

*If confirm, please release any advice, legal or otherwise, NHS Improvement has received, commissioned or generated on the use of the following measures by NHS organisations as part of ongoing cost saving initiatives:*

- a. Restrictions on patient choice*
- b. Introduction of treatment thresholds*
- c. Restrictions on prescribing*
- d. Cessation of discretionary funding*
- e. Reductions in planned clinical activity*

## **Decision**

We have not been able to progress your request, because to do so would exceed the cost limit under section 12 of the FOI Act.

### *Aggregation of requests*

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 has provision for where two or more requests for information relate, to any extent, to the same or similar information, and are received within any period of sixty consecutive working days. In that situation, public authorities are to estimate the cost of complying with any of the requests as the cost of complying with all of them.

Therefore, NHS Improvement has been unable to progress your requests due to the combined total cost of complying with the ten requests received by NHS Improvement from yourself on the 6 July 2017.

### *Cost Limit under section 12 of the FOI Act*

Under section 12(1) of the FOI Act, NHS Improvement is not required to comply with any request that potentially exceeds the relevant cost limit. The relevant cost limit is £450, which is set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004. This equates to a period of approximately eighteen hours in which to locate, retrieve and extract the information that you have requested.

In NHS Improvement's view, compliance with your request will exceed this limit because of the following two key reasons:

1. The scope of the request is very broad:
  - The category of information requested is broadly worded and would mean that we would have to review a significant amount of the documentation held to locate the information related to each request.
  - The scope of a number of the requests made in your emails is not restricted to a specific time period.
2. The volume of documents that would need to be reviewed to locate the information covered by the request is significant:
  - The Capped Expenditure Process is an intensive process to contain expenditure in areas of the country with high financial risk and/or historical overspending of their share of funding. There are a number of trusts involved in this process, and the work around this process has generated a large volume of correspondence and documentation.
  - There have been a significant number of individuals, from different teams within NHS Improvement, involved in the process. We would therefore need to search the records of a large number of individuals to identify the information requested.

Please note that NHS Improvement does not need to provide information in a number of circumstances, including the circumstances set out below, which are relevant to your request.

*Advice and Assistance provided under section 16 of the FOI Act*

Under section 16 of the FOI Act, NHS Improvement is required, as a public authority, to provide advice and assistance so far as is reasonable, to individuals who have made a request to it under the FOI Act.

Given NHS Improvement's indication above of the volume of documentation that would need to be reviewed to locate the information sought, NHS Improvement would provide the following indications to assist you to make a request that can be complied without the time limits in section 12 becoming applicable. You may wish to:

- narrow the scope of your request to describe more precisely the kind of information sought;
- narrow the scope of your request by limiting the timescale of the search;

- limit your request to certain employees/groups of employees at NHS Improvement; and/or
- consider the types of information that may be excluded from release under the FOI Act.

Please note that Foundation Trusts, NHS Trusts, and the Department of Health are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act.

### **Review rights**

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally by contacting the FOI mailbox at [nhsi.foi@nhs.net](mailto:nhsi.foi@nhs.net). If you remain dissatisfied, you may seek an internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement's staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [nhsi.foi@nhs.net](mailto:nhsi.foi@nhs.net).

Yours sincerely,

**NHS Improvement**