

31 October 2017

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London SE1 8UG

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By email

Dear [REDACTED]

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

I refer to your email of 4 July 2017 in which you requested information under the FOI Act from NHS Improvement, following our response of that date to your original request.

Your request

You made the following request:

Please release any and all emails between the DOH, NHS England, NHSI and Bristol CCG and all providers and trusts around the STPs including financial conversations and details where NHSI has been involved in email exchanges?

Decision

NHS Improvement holds the information that you have requested. We are disclosing some of the information, which is attached to this letter.

NHS Improvement has however decided to withhold the other information on the basis of the applicability of the exemptions in sections 36 and 40 of the FOI Act as explained in detail below.

Section 36(2) (prejudice to effective conduct of public affairs)

NHS Improvement has decided to withhold some of the information requested on the basis that it falls within section 36(2) of the FOI Act (prejudice to the conduct of public affairs) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as NHS Improvement’s qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would be likely to inhibit the free

and frank provision of advice (section 36(2)(b)(i)) and exchange of views for the purposes of deliberation (section 36(2)(b)(ii)). The qualified person is also of the view that disclosure of the information would otherwise prejudice the effective conduct of public affairs (section 36(2)(c)).

NHS Improvement is one of the national bodies working with the local NHS in order to provide continued support for the development of Sustainability and Transformation Plan (STP) proposals. NHS Improvement and the other national bodies rely on free and frank discussions being held between them and local STP partners, in order to support and develop those STPs. This enables the sharing of views, and the provision of advice, both between the national organisations and between the national and local bodies, which informs decisions about the proposals contained in each STP and the operation of the relevant local partnerships, as well as STP policy generally.

Many of the emails within scope of this request include emails setting out opinions and views on STPs, or providing advice on issues relating to STPs, which are not in the public domain. The exchanges are a necessary part of the relationship between NHS Improvement and the national bodies, and the national and local bodies, to enable the various parties to determine policy and operational positions on STP matters. In each case, the emails were exchanged in the clear expectation that discussions would remain confidential. These arrangements are important to enable frank and open discussions that enable the NHS to develop high-quality Sustainability and Transformation Plans, that will enable local areas to develop and implement proposals to improve health and care.

In addition, even where the the material in the emails does not consist of the provision of advice, nor the specific exchange of views for the purposes of deliberation, it was nonetheless correspondence conducted in the expectation that it would remain confidential. It forms part of the on-going confidential discussions between national and local bodies, which are necessary for the development of the STP policy. To be effective, the discussions rely on a relationship of trust and confidence. Disclosure of these emails would be likely to damage that relationship and inhibit the free flow of views and information about STPs, with a detrimental impact on policy development.

Public interest test

NHS Improvement's view is that the public interest in maintaining the exemption outweighs the public interest in disclosure. We recognise that there is a general public interest in disclosing information to further the accountability of NHS Improvement and other national bodies, and to foster transparency. We also recognise a specific public interest in understanding the proposals and decisions involved in local STPs, particularly in relation to the financial position of the local NHS and the potential impact of financial deficits, given the effect those proposals and decisions may have on local NHS services.

However, there is a strong public interest in NHS Improvement and the other national bodies being able to provide advice and hold free and frank discussions about developing policy without concern that the detail of those discussions will be disclosed inappropriately, and in ensuring those bodies are able to have the open and confidential discussions necessary to ensure effective NHS policy. We also note the information that is already publicly available about the Bristol, North Somerset and South Gloucestershire STP and STPs generally,

which we referred to in our email of 4 July, including the information accessible via Bristol CCG's website (<https://www.bristolccg.nhs.uk/about-us/sustainability-and-transformation-plan/>) and the information on NHS England's website (<https://www.england.nhs.uk/stps/>).

Section 40 – personal data

I consider that some of the information is exempt from disclosure under section 40(2) and 40(3)(a) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully). This is an absolute exemption and consideration of the public interest test is not required.

The information in the documents withheld on this basis includes names of junior staff who do not have public-facing roles, and individual contact details. The individuals concerned would have a reasonable expectation that the information would not be disclosed, and we consider the disclosure would breach the requirement of the first data protection principle that personal data must be processed fairly.

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 with the person who dealt with your request. 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.

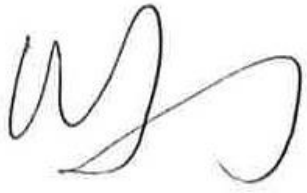
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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.

Publication

Please note that this letter and the attached information will shortly be published on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'VK', written in a cursive style.

Victoria Keilthy
Head of Delivery and Improvement