



The information includes views on the regulatory approach in relation to Norfolk and Suffolk NHS Foundation Trust. In order to carry out its statutory functions NHS Improvement must be able to hold free and frank discussions about regulatory action without concern that the detail of those discussions will be disclosed. That is, public authorities must be afforded a safe space within which to deliberate and discuss matters before making a decision. If this material were published, it would be likely to restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. The result would be to reduce the quality of discussion provided in such cases and an adverse impact on the ability of NHS Improvement to carry out its functions.

### *Public interest test*

Section 36 of the FOI Act is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained. The test is whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst we accept that there is a public interest in transparency and openness in understanding how NHS Improvement makes its regulatory decisions, there is a stronger public interest in NHS Improvement being able to hold free and frank discussions without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring that it is able to have the open and confidential discussions necessary to ensure effective NHS decision making. We consider that the public interest in transparency is met by our disclosure of information in the attachment in a way that safeguards the interests described above that we are seeking to protect.

Having weighed up the competing factors, I consider that the public interest is in favour of withholding the information.

### **Section 40- personal information**

The information is being withheld from disclosure under section 40(2) of the FOI Act on grounds that it is personal data and that the first condition of section 40(3)(a)(i) is satisfied, namely that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully). This is on the basis that staff below the position of Executive Senior Manager (which is the case here) have a reasonable expectation that their names would not be disclosed. Disclosing this information without consent would amount to unfair processing and a breach of the first data protection principle.

Section 40 is an absolute exemption and consideration of the public interest in disclosure is not required.

### **Section 43 - prejudice to commercial interests**

Section 43(2) of the FOI Act provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person.

The withheld information contains the fee rates of the Improvement Director and NHS Improvement considers this information to be commercially sensitive and that its disclosure would be likely to harm the commercial interests of NHS Improvement in negotiating competitive fees for such services in the future. The Improvement Director roles are different for each provider and depend upon the specific issues faced. As a result, each role requires different types of experience and levels of operation with the sector and the rates applicable for each role are individually negotiated. If we were to release the daily rates agree for the services of this particular Improvement Director, individuals seeking to negotiate contracts with NHS Improvement for such a position could use the information to strengthen their own bargaining position when negotiating for, or providing services to, NHS Improvement.

### *Public interest test*

Section 43 of the FOI Act is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained. The test is whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst we accept that there is a public interest in the accountability and transparency of spending public money, NHS Improvement already publishes information routinely about its spending. We consider that the public interest in transparency is met by our disclosure of information in the attachment in a way that safeguards the interests described above that we are seeking to protect.

Having weighed up the competing factors, I consider that the public interest is in favour of withholding the information.

### **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](mailto:nhsi.foi@nhs.net).

## **Publication**

Please note that this letter and the attachment 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 read 'Naresh Chenani', enclosed within a circular scribble.

**Naresh Chenani**

Head of Delivery and Improvement