

19 December 2017

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

By email

Dear [REDACTED]

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

I refer to your two emails of **1 December 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority 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:

“I would like to know the following information please:

- 1. Data collected from pathology departments in England for 2015/16 and 2016/17 which was used to base the original decision as to where hubs should be located— could you please release this data for examination. In its raw form (as received by NHSi) is fine.*
- 2. Alternative proposals to the networks proposed in September 2017 – could you please release any and all alternative proposals which have been received between September 2017 and 1st December 2017. This is of particular relevance where alternative or additional ‘hubs’ have been proposed.”*

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in sections 22 and 43 of the FOI Act as explained in detail below.

Section 43 – 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 data collected from pathology departments in England contains information from which the prices for services can be calculated and is therefore highly commercially sensitive and disclosure of which would be detrimental to the providers' legitimate commercial interests in establishing the pathology networks. For example, suppliers could undersell and undermine the proposed solutions thus negatively impacting the networks to be implemented.

All trusts are, however, already able to access a version of the data drilled down by pay and non-pay metrics via NHS Improvement's Model Hospital.

Public interest test

Section 43 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained.

NHS Improvement has considered the public interest in transparency and accountability in relation to the expenditure of public money, including decisions about the structure of pathology services. We have however also considered the strong public interest in maintaining the legitimate commercial interests of providers and enabling providers to share data in relation to pathology services with NHS Improvement for the purpose of informing decisions in relation to the structuring of services without the risk of such information being made public and negatively impacting the proposals to be implemented. NHS Improvement has therefore concluded that in this case the public interest in disclosure of the information in question is outweighed by the need to safeguard the legitimate commercial interests of the relevant providers.

Section 22 – information intended for future publication

Section 22 provides an exemption where information is held by a public authority with a view to future publication, if it is reasonable to withhold the information from disclosure until the date of publication.

In relation to any alternative proposals that have been received between September 2017 and 1 December 2017, following the very small group of trusts who have submitted their evidence for a counter-proposal, NHS Improvement intends to publish a new network pack in early 2018.

Some of the information that you have requested falls within the exemption at section 22 of the FOI Act and this exemption is subject to the public interest test. NHS Improvement considers the public interest in maintaining the exemption is greater than the public interest in disclosing this information. The public interest test will be met by future publication of this information and NHS Improvement considers it is reasonable to withhold this information and keep to our proposed timetable for publication.

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 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,



David Wells

Head of Pathology Services Consolidation, Operational Productivity