

18 May 2017

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**By email**

Dear [REDACTED]

**Request under the Freedom of Information Act 2000 (the "FOI Act")**

We refer to your email of 19 April 2017 in which you requested information under the FOI Act from NHS Improvement.

**Your request**

You made the following request:

*"Please can you provide me under the FOI with this information, for the period from 1 October 2016 to March 31 2017.*

*1. NHS posts (provide name of post, and organisation) where approval has been granted by NHS Improvement to pay interim agency very senior manager rates - where the daily rate for an agency VSM is over £750.*

*This rate includes costs of: holiday pay, employer national insurance, employer pension contribution, administration fee/agency fee and any other fixed or variable fees or payments to the worker or agency, eg travel, accommodation, finder's fee, bonuses.*

*2. Please include cases where approval was given to*

- sign new contracts with agency VSMS*
- extend or vary existing contracts*
- incur extra expenditure to which the trust was not already committed*

*3. In each case please provide details of the remuneration package;*

*This should include the daily rate (including costs of holiday pay, employer national insurance, employer pension contribution, administration fee/agency fee and any other fixed or variable fees or payments to the worker or agency, eg travel, accommodation, finder's fee, bonuses.)*

*Plus any extra costs and estimated expenses.*

Also please provide the period of engagement agreed.

4. Please also provide details of NHS posts where approval was sought but not granted during this period.”

### **Decision**

The interim agency VSM rules apply to:

- All NHS trusts;
- NHS foundation trusts receiving interim support from the Department of Health; and
- NHS foundation trusts in breach of their licence for financial reasons.

However, all foundation trusts are strongly encouraged to comply with the process.

We have understood your request to relate to all requests for approval received, including from trusts not formally subject to the rules. Full details of the approval process are available on our website via the following link: [click here](#).

NHS Improvement holds some of the information that you have requested. The period you specified is 1 October 2017 to 31 March 2017. The Interim Agency Very Senior Manager Approval Process was published on 30 October 2017 and NHS Improvement does not hold any information for the period before that date.

NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemptions in sections 33, 40 and 43 of the FOI Act. However, we are able to confirm that since 30 October 2017 NHS Improvement has received 17 applications. Of these:

	total Applications	Operational Management		Project/IT	
		Applications	Rates	Applications	Rates
Approved	4	2	874 1360	2	885 873
Not Approved	5	3		2	
Withdrawn	5				
<b>Total</b>	<b>14</b>				

3 applications are currently under review (and therefore outside the scope of your current request).

The reasons for withholding the balance of the information held by NHS Improvement are set out below.

### **Section 40: Personal Information**

Under section 40 of the FOI Act, information is protected from disclosure if it is personal data protected under the Data Protection Act 1988 (“the DPA”). Section 40(7) of the FOI Act provides that the relevant definition of personal data is that set out in section 1(1) of the DPA:

*“personal data” means data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data, and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.*

Some of the information you have requested is being withheld from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data. You have asked for details of the organisation, post and “remuneration package” of cases where approval has been given for a daily rate for agency VSM exceeding £750. This information relates to living individuals who would be capable of being identified if the information is disclosed. This information is not in the public domain and we consider that the people who would be identified by disclosure of this information have a reasonable expectation that details of their remuneration package would not be published. NHS Improvement therefore considers that disclosure of this information to you would not amount to fair processing and that disclosure would amount a breach of the data protection principles. This exemption is an absolute exemption and consideration of the public interest is not required.

### **Section 33: Audit functions**

Section 33(1)(b) and 33(2) of the FOI Act provides that information may be exempt from disclosure where disclosure would, or would be likely to, prejudice the exercise of any public authority’s functions in relation the examination of the economy, efficiency and effectiveness with which public authorities use their resources in discharging their functions.

NHS Improvement considers that the withheld information, in so far as it relates to foundation trusts, is exempt under section 33(1)(b) on the basis that Monitor has functions in relation to the examination of the economy, efficiency and effectiveness with which NHS foundation trusts use their resources, which is likely to be prejudiced by releasing the withheld information.

Monitor has these functions by virtue of Monitor’s general duty under section 62(1)(a) of the 2012 Act to protect and promote the interests of health care service users by promoting the provision of services which is economic, efficient and effective and improves the quality of services. Further, see the conditions of the provider licence which Monitor uses to regulate the economy, efficiency and effectiveness of foundation trusts.

NHS Improvement considers that the withheld information, in so far as it relates to NHS trusts is also exempt under section 33(1)(b) on the basis that the TDA has functions relating to the examination of the economy, efficiency and effectiveness with which NHS trusts use their resources in discharging their functions (as described above), which is likely to be prejudiced by the release of the information that is being withheld.

NHS Improvement depends on the free and frank provision of information from trusts without fear of this being shared more widely, and considers that disclosure would be likely to have a detrimental impact on the quality and content of those exchanges in the future if details or any analysis derived from those details was published to the public at large. This would in turn be likely to have a prejudicial impact on the exercise of NHS Improvement's regulatory functions.

### **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 information provided by providers to NHS Improvement is financial, which by its nature is commercially sensitive and disclosure of which is highly likely to be detrimental to the legitimate commercial interests of the providers. For example, prospective agency workers seeking to negotiate contracts with the provider in question could use the information to strengthen its bargaining position. Further, competitors may be able to use such information to their advantage to the detriment of the trusts' legitimate interests. We therefore consider that information relating to approval of very senior manager rates is commercially sensitive.

### **Public Interest Test**

Sections 33 and 43 are qualified exemptions and therefore require a public interest test to be carried out to determine whether the exemptions should be maintained. NHS Improvement considers that in relation to compliance by providers with the agency rules there is a public interest in transparency. To that end NHS Improvement has provided details of the number of requests received, whether they have been approved and the areas of business in question.

However, we also consider that there is a strong public interest in giving NHS Improvement and providers the space to exchange sensitive commercial information without disclosing the same to a wider audience. Disclosure of this information would be detrimental to the trust supplying the information and would also potentially prejudice NHS Improvement's audit functions. We have therefore concluded, on balance, that the public interest in this case is best served by withholding some of the information requested.

### **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, would 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 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,

**NHS Improvement**