

21 July 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 **24 June 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:

"Please provide a detailed chronology of all instances of data manipulation that have occurred in the waiting lists at Kettering General Hospital FT as far as your records go.

Please provide a copy of any and all associated reports, meeting minutes and associated agreed outcomes/actions for each data manipulation event to include the CPA report into the data manipulation I whistle blew about."

Decision

NHS Improvement does not hold information regarding what we would define as “data manipulation” at Kettering General Hospital FT. We have therefore interpreted your request as asking for a chronology of Referral to Treatment Time (RTT) issues that NHS Improvement has been aware of, and related documents to these issues, including reports, meeting minutes and associated agreed outcomes and actions arising from these issues. NHS Improvement does hold this information.

NHS Improvement has decided to withhold the information it holds on the basis of the applicability of the exemptions in section 21 and 31, as explained in detail below.

Section 21 (information accessible to applicant by other means)

Section 21(1) of the FOI Act provides that information is exempt if it is reasonably accessible to the applicant by other means.

Information has recently been released by Kettering General Hospital NHS Foundation Trust in response to a number of FOI Act requests and enquiries which relate to the content of your FOI request. This information is publicly available on the Trust's website. NHS Improvement also responded to a recent FOI request regarding Kettering General Hospital NHS Foundation Trust. That response is available on our website here: <https://improvement.nhs.uk/about-us/corporate-publications/publications/FOI-Kettering-General-Hospital-NHS-Foundation-Trust-RTT-investigation/>.

Section 31 (law enforcement)

NHS Improvement considers that the withheld information is exempt from disclosure under section 31(1)(g) of the FOI Act. This section provides that information is exempt if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2).

NHS Improvement considers that section 31(2)(c) is engaged and that disclosure of the information in question would be likely to prejudice the exercise by NHS Improvement of its functions for the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of an enactment. NHS Improvement considers that releasing the investigation working documents and internal papers would be likely to prejudice its relationship with providers and therefore NHS Improvement's regulatory role in the performance management of the service.

NHS Improvement relies on full and frank information from trusts in order to carry out its functions effectively. This is particularly the case in regards to carrying out NHS Improvement's investigatory functions, which require the full cooperation of the relevant trust and the provision of confidential and commercially sensitive information, in order to be effective. NHS Improvement relies on having a safe space in which providers are freely able to share sensitive and confidential information in the knowledge that the information, or any analysis derived directly from it, will not be disclosed more widely. To disclose that information more widely is likely to have a detrimental impact on the quality and content of exchanges between NHS Improvement and the bodies it collectively regulates and its ability to make effective and fully informed regulatory decisions.

Public interest test

Section 31 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. We have considered whether, in all the circumstances of the case, the public interest in maintaining the exemption from disclosure outweighs the public interest in disclosing information, and decided that it does.

We have considered the public interest in disclosing this information on the grounds of accountability and transparency, both in relation to how NHS Improvement carries out its role and in relation to quality of care provided by NHS foundation trusts. But we consider that the strong public interest in NHS Improvement being able to oversee and regulate trusts effectively, and the need to ensure that trusts are able to share confidential or sensitive

information with NHS Improvement without concern that such information will enter the public domain, outweigh the public interest in disclosure of the information being withheld.

As an additional consideration, regulatory action taken by NHS Improvement in response to any investigatory work it undertakes is published on our website. There has been regulatory action taken regarding Kettering General Hospital NHS Foundation Trust, which can be found here: <https://www.gov.uk/government/groups/kettering-general-hospital-nhs-foundation-trust>.

Please note that NHS 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 in the first instance by contacting our FOI mailbox at 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.

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