

15 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 ██████████

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

I refer to your email of 21 November 2017 in which you requested an internal review of NHS Improvement’s decision dated 20 November 2017. Your original FOI Act request dated 23 October 2017 stated:

“Please could you provide me with the information you hold on care hours per day per patient on the model hospital portal.

I understand each trust provides information into the portal.

Therefore please could you provide me with the department breakdown provided by individual hospitals since it has started.

If this is not possible, please provide just the latest information provided by each trust.

I would like the trust named and each department named alongside the figures that are provided. If this is broken down by staff group please provide that too.”

NHS Improvement responded on 20 November 2017, stating:

“NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold all of the information it holds on the basis of the applicability of the exemption in section 22 of the FOI Act, as explained in detail below.

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 the information we hold on care hours per patient day on the model hospital portal (which is currently restricted to registered authorised users in trusts), this information will be published to the public at large by NHS Improvement in 2018.

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 the information. The public interest test will be met by future publication of this information and NHSI considers it is reasonable to withhold this information and keep to our proposed timetable for publication.”

Internal Review

On 21 November 2017, you requested an internal review of the original decision, stating:

“The refusal notice gives no indication of a likely publication date beyond saying 2018. To me this undermines the idea that there really is a settled intention to publish and that all the information I have requested will be released.

And with no date specified, publication could be a long way off, during which period the public will be denied access to this information.

It’s in the public interest for the information to be disclosed now, because it would inform public debate and increase accountability and transparency, and it is urgent this happens now rather than waiting because the health service is under unprecedented pressure and there are clear concerns being raised about the state of the workforce.”

Decision

I have now considered your request again and in particular the application of section 22 of the Freedom of Information Act 2000. Having done so, I have decided that the original decision should be upheld.

Reasons for decision

I refer you to the guidance published by the Information Commissioner on Section 22 – Information intended for future publication, specifically paragraphs 12 to 14 which state:

“12. Although the public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date to be in place.

13. So a public authority may still be able to apply section 22 if:

- there is a publication deadline, but publication could be at any date before then; Information intended for future publication and research information (sections 22 and 22A)*
- publication will take place once other actions have been completed;*
- publication will take place by reference to other related events; or*
- there is a draft publication schedule that hasn’t been finalised.*

14. As long as the public authority has decided that it or another person will publish the information at some time in the future, the exemption may apply.”

Having made enquiries I have confirmed the information is held by NHS Improvement and will be published in 2018. Whilst the date of publication has yet to be determined, the intention is to publish the information in 2018. I am therefore satisfied that the exemption is engaged.

Section 22 of the Act is a qualified exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but the public interest in preventing that prejudice must outweigh the public interest in disclosure.

Public Interest Test

Considerations in favour of disclosure:

- Furthering the participation in the public debate of issues of the day.
- Promoting accountability and transparency by public authorities.

Considerations against disclosure:

- The information is intended for future publication.
- To allow time and space for the findings to be thoroughly validated and examined.
- To avoid the duplication of work by public authorities.

Conclusion:

NHS Improvement recognises that there is a public interest in the disclosure of information which facilitates the accountability and transparency of public bodies for decisions taken by them. However, I am satisfied that NHS Improvement promotes accountability in this regard though its intention to publish. Furthermore, there is an inherent public interest in not disclosing information which could be misleading to the public and to avoid the duplication of work where there is already a set intent to publish.

Having undertaken a balancing exercise, I have concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.

Review rights

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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,

A handwritten signature in black ink that reads "Andrew Rawstron". Below the signature is a short horizontal line.

Andrew Rawstron
Legal Director