

19 June 2017

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By email

Dear [REDACTED]

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

I refer to your email of **19 May 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:

“I am sending this request under the Freedom of Information Act.

- 1) Please provide all communications between the office of the Chief Executive of NHS Improvement, Jim Mackey, and the Treasury regarding raising money for NHS investment by borrowing from hedge funds.*
- 2) Please provide all communications between the office of the Chief Executive of NHS Improvement, Jim Mackey, and the Department of Health regarding raising money for NHS investment by borrowing from hedge funds.*
- 3) Please provide all communications between the office of the Executive Director of Resources, Bob Alexander, and the Treasury regarding raising money for NHS investment by borrowing from hedge funds.*
- 4) Please provide all communications between the office of the Executive Director of Resources, Bob Alexander and the Department of Health regarding raising money for NHS investment by borrowing from hedge funds.”*

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemption in section 36 of the FOI Act as explained in detail below.

Question One

NHSI holds information relevant to your request under question one.

In answer to question one, NHS Improvement has decided to release the following information from the communications. On 10 April 2017 the office of the Chief Executive of NHS Improvement confirmed to the Treasury in writing that NHS Improvement has not had any discussions, nor is it planning to have any discussions, with any hedge funds. This illustrates the nature of all communications between the office of the Chief Executive of NHS Improvement, Jim Mackey, and the Treasury regarding raising money for NHS investment by borrowing from hedge funds.

NHS Improvement has decided to withhold the remaining information it holds which falls within the scope of question one on the basis of the exemption in section 36(2) of the FOI Act.

Question Two

In answer to question two, there have been no communications between the office of the Chief Executive of NHS Improvement, Jim Mackey, and the Department of Health regarding raising money for NHS investment by borrowing from hedge funds.

Question Three

In answer to question three, there have been no communications between the office of the Executive Director of Resources, Bob Alexander, and the Treasury regarding raising money for NHS investment by borrowing from hedge funds.

Question Four

In answer to question four, there have been no communications between the office of the Executive Director of Resources, Bob Alexander, and the Department of Health regarding raising money for NHS investment by borrowing from hedge funds.

Section 36(2) (prejudice to effective conduct of public affairs)

In relation to the information within the scope of the request which is withheld, NHS Improvement has decided not to disclose this information on the basis that it falls within section 36(2)(b)(i) and (ii), and 36(2)(c) of the FOI Act (prejudice to the effective conduct of public affairs).

This exemption is engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would be likely to inhibit the free and frank provision of advice and/or the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(i) and (ii)).

Disclosure of the information would inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation. In particular it would inhibit free and frank discussions between the Chief Executive of NHS Improvement and Treasury Ministers and senior officials, in relation to important NHS policy and operational matters. Disclosure would reduce the candour and frankness with which advice and views would be expressed, as those individuals would be concerned about the possibility that their views and advice would be made public. This would limit frank, open and honest discussion about policy options, with the resulting detrimental impact on the quality of policy development and national decision-making in relation to the NHS.

In addition, disclosure of the information would be likely to prejudice the effective conduct of public affairs. In particular it would be likely otherwise to damage the relationship of trust and confidence between NHS Improvement and the Treasury. It would also inhibit the free flow of views and information, with a detrimental impact on the ability of NHS Improvement to provide effective and co-ordinated support and management of the NHS.

Public interest test

This exemption is subject to a public interest test. NHS Improvement's view is that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosure. In considering the balance, we have considered the public interest in transparency and openness in relation to decisions by public bodies, particularly decisions about the NHS. In particular, in the present case, we accept there is a public interest in understanding policies regarding future funding of the NHS.

We have also considered however the strong public interest in NHS Improvement being able to hold free and frank discussions with the Treasury and other Government departments about policy decisions, including the provision of relevant views and advice, without concern that the detail of those discussions will be disclosed. We have also noted the information we have provided in this letter.

Taking into account these considerations, our decision is that the public interest in maintaining the exemption outweighs the public interest in releasing the withheld information.

Please note that NHS foundation trusts, NHS trusts, the Department of Health, and Her Majesty's Treasury 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 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,

A handwritten signature in black ink, appearing to read 'Jonathan Brown', with a stylized flourish at the end.

Jonathan Brown
Office of Chairman and CEO