

17 November 2017

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133-155 Waterloo Road
London SE1 8UG

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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 email of **21st October 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority “NHS TDA” are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the NHS TDA.

Your request

You made the following request:

“Please disclose Board Document: BM/17/48(P) “Provider policy and new care models”, presented by Miranda Carter at the NHSI Board meeting of 25.5.17.”

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 section 36 of the FOI Act as explained in detail below.

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

NHS Improvement has decided to withhold the information requested on the basis that it falls within section 36(2)(b)(i) and/ or (ii) and section 26(2)(c) of the FOI Act (prejudice to the effective conduct of public affairs) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as NHS Improvement’s qualified person, Jim Mackey (Chief Executive Officer) is of the opinion that the disclosure of this information would 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)). The qualified person is also of the view that disclosure of the information would otherwise prejudice the effective conduct of public affairs (section 36 (2)(c)).

In order to carry out its statutory functions, NHS Improvement must be able to hold free and frank discussions about policy decisions and consider advice received from NHS Improvement staff about confidential and sensitive matters, without concern that the detail of those discussions or that advice will be disclosed. If this material were published it would restrict the candour and frankness with which similar future discussions would be conducted as individuals would be concerned about the possibility that those views and discussions would be made public. The result would be to inhibit the quality of advice and discussions in such cases and which would have an adverse impact on the ability of NHS improvement to develop effective policy and carry out its functions.

NHS Improvement's qualified person is also of the opinion that disclosure of the information reserved to the private board sessions would otherwise prejudice the effective conduct of public affairs. The established procedure of the Board is to have both public and private sessions. The information being withheld is a paper for a private session of the Board of NHS Improvement which contains preliminary views and ideas which are not yet the view of NHS Improvement. The private sessions of the Board provide it with a 'safe space' in which to develop ideas, debate live issues, and reach decisions. Disclosure of the private Board papers would prejudice the 'safe space' created by the use of private Board sessions which would reduce the quality of both debate and decision making which, in turn, would prejudice the effective conduct of public affairs.

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 affecting the NHS. NHS Improvement Board meetings are held in public and members of the public can attend. Only matters of a confidential or sensitive nature are reserved to the private session, where it is considered that discussion in public would be prejudicial to the public interest.

However, we have therefore considered the strong public interest test in NHS Improvement being able to hold free and frank discussions about policy decisions, and advise on those decisions, without concern that the detail of those discussions will be disclosed.

NHS Improvement has also considered the strong public interest in the Board of NHS Improvement having a 'safe space' in which to consider all the advice and views provided to it without concern that those details will be disclosed inappropriately. There is a public interest in preserving the integrity of the private sessions of the Board of NHS Improvement to ensure it is able to have the open and confidential discussions necessary to ensure

effective decision making. The public interest lies in sensible, well-considered policies being made, which can only come about when a safe space is provided in which to formulate and develop such policy. By disclosing the private papers and undermining such a 'safe space' for policies to be considered, the quality of future determinations may be impacted, which would not be in the public interest.

We have also taken into account that, in relation to the risk that disclosure would prejudice the effective conduct of public affairs, the opinion of NHS Improvement's qualified person was that the prejudice would occur (ie it was more probable than not that prejudice would occur).

Taking into account these considerations, our decision is that the balance of public interest is in withholding this information.

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.

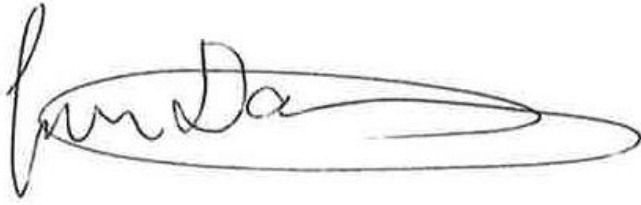
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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 'Jessica Dahlstrom', enclosed within a large, horizontal, hand-drawn oval.

Jessica Dahlstrom
Head of Governance