

9 August 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 [REDACTED]

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

I refer to your email of 12 July 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 would like to make a request under the Freedom of Information aCt please.
I would like to see a copy of the report NHS Improvement commissioned of the RTT issue at King's College Hospital Foundation Trust, referred to on pg.162 of this document <http://www.croydonccg.nhs.uk/about-us/Governing%20body/Governing%20Boday%20Papers/04-07-17/GB%20040717.pdf>”*

Decision

NHS Improvement opened an investigation in relation to referral to treatment (RTT) concerns at King’s College Hospital NHS Foundation Trust (the “Trust”) in January 2017. NHS Improvement holds a letter to the Trust dated 20 June 2017 in which it explained that it was closing the investigation. The letter attached a pack of slides in which NHS Improvement set out its findings from the investigation, the actions it expects the Trust to undertake in relation to those findings and the support that NHS Improvement will provide.

NHS Improvement has decided to withhold the information it holds on the basis of the applicability of the exemption in section 31 of the FOI Act, as explained in detail below.

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. The letter and slides referred to above contain information that the Trust provided to NHS Improvement during the course of the investigation and NHS Improvement's findings based on that information.

NHS Improvement considers that releasing the requested information would be likely to prejudice its relationship with providers and therefore its regulatory role in overseeing them and taking action to address concerns in relation to them. NHS Improvement relies on full and frank information from trusts in order to carry out its functions effectively. This is particularly the case with regard to NHS Improvement's investigatory functions, which require the full cooperation of the relevant trust, and the provision of sensitive and confidential 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

We have considered whether, in all the circumstances of the case, the public interest in maintaining the exemption 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 the services provided by NHS foundation trusts and NHS 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 otherwise 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, formal enforcement action taken by NHS Improvement in response to any investigatory work it undertakes is published on our website. The formal enforcement action regarding the Trust can be found [here](#). NHS Improvement decided not to take formal enforcement action in relation to the RTT concerns at this time. Formal enforcement undertakings from the Trust were accepted by NHS Improvement on 6 July 2017 regarding the Trust's financial sustainability.

The Trust has published information regarding its RTT performance in its public Board papers, which are available on its web-site [here](#).

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 and the attached information 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 'Jen Leonard', with a small dot at the end.

Jen Leonard

Delivery and Improvement Director