

12 October 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 ██████████

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

Request

We refer to your email dated 14 September 2017 in which you asked a series of questions relating to Section 28 Reports. Since 1 April 2016, Monitor and the NHS TDA have been operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the NHS TDA.

In your email, addressed to Jim Mackey, you requested the following information:

1. I write to enquire what governance arrangements NHS Improvement and its predecessor bodies Monitor and the NHS Trust Development Authority had in place for handling intelligence in the form of coroners’ Section 28 reports on action to prevent future deaths.
2. Please also advise if NHS Improvement holds central information about Section 28 reports that relate to the NHS, and if so, what fields feature in NHS Improvement’s database.
3. The Chief Coroner has published one Section 28 report that was sent to NHS Improvement as a named respondent. [H<https://www.judiciary.gov.uk/publications/helen-millard/>](https://www.judiciary.gov.uk/publications/helen-millard/)

There is no published response from NHS Improvement to the coroner. Please can NHS Improvement disclose a copy of its response to the coroner.

4. Please can NHS Improvement advise if it (or its predecessors) have received any Section 28 reports that have not been published by the Chief Coroner.
5. Lastly, please indicate if NHS Improvement would be willing to set an example of transparency and accountability in future by publishing all the Section 28 reports that it receives and the responses to Section 28 reports that it provides to coroners.

Decision

NHS Improvement holds some information within the scope of your request, specifically in relation to question 3. You have also raised a number of questions to which we are responding as enquiries.

Our response is as follows:

1. Neither Monitor nor the NHS Trust Development Authority had formal governance arrangements for handling intelligence from section 28 reports prior to integration. However, any request for information would have been formally recorded, assessed and shared with the appropriate team for action, including but not limited to any regional team and the appropriate clinical quality lead. In particular, Monitor's Risk Assessment Framework noted "Many third parties, including other regulators, auditors, medical Royal Colleges, training establishments and coroners, comment on and review aspects of an NHS foundation trust's performance. We do not require NHS foundation trusts to send us each and every report that includes commentary or observation on their performance. However, we do require trusts to inform us of reports that can reasonably be regarded as raising potential concerns over a trust's current or potential compliance with licence conditions, in particular the NHS foundation trust governance condition."

NHS Improvement has recently developed internal guidance for the management of Section 28 Reports, a copy of which is attached. The copy we are providing has been redacted to omit some staff names, applying our policy in relation to disclosure of personal information.

2. NHS Improvement holds information in the form of an Excel database. The fields are:
 - NHS Improvement's reference number;
 - the date the report was received;
 - the organisation the report was sent by (i.e coroner/trust/partner organisation);
 - who the report addressed to;
 - date of receipt acknowledgement;
 - name of the Coroner;
 - name of the deceased/case name;
 - hospital/region;
 - deadline for final response;
 - name of those contributing to the response;
 - the deadline for contributions for the response;
 - date the response was approved by legal;
 - date the response was sent; and
 - comments.
3. Responses to regulation 28 letters are court documents for the purposes of section 32(1)(a) of the FOI Act: see the ICO's Decision Notice dated 8 February 2016 in case

reference FS50611169. We are therefore withholding our response under section 32. This is an absolute exemption under the FOI Act and the public interest balancing test does not apply.

4. We do not hold any information in this respect.
5. Please refer to our answer to question 3 above. In accordance with the ICO's decision both section 28 reports and responses are court documents and are exempt from disclosure under the FOI Act. The Coroners (Investigations) Regulations 2013 give the Chief Coroner the power to publish both reports and responses.

Review rights

As noted above we have treated questions 1, 2, 4 and 5 as enquiries and responded on that basis. If you consider that your request for information in respect of question 3, which we have addressed under the FOI Act, has not been properly handled 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,

NHS Improvement

NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.