

09 February 2018

Wellington House  
133-155 Waterloo Road  
London SE1 8UG

T: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

**By post**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

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

Thank you for your letter of 12 January 2018, in which you requested an internal review of NHS Improvement’s decision of 30 November 2017.

**Your Original Request**

On 01 November 2017 you made the following request:

*“ I am requesting a copy of the presentation by SSHG Health on the FIP Phase 2 analysis, which was presented to the board of the East of England Ambulance Service NHS Trust on 29<sup>th</sup> June 2017 and was subsequently passed on to NHS Improvement for analysis.”*

**The Original Decision**

In our decision letter dated 30 November 2017 we noted that we hold the information that you have requested but that we had decided not to release it to you for the reasons set out in that letter. We relied upon the exemptions set out in sections 31, 33 and 41 of the FOI Act.

In particular, we noted that we had applied the Information Commissioner’s decision (FS50680102), which concerned a previous request for information relating to East of England Ambulance Service and SSG Health, for the period 23 September to 22 December 2016.

## **Internal Review**

Following receipt of request for an internal review I have now completed that review. I have decided to uphold the original decision for the reasons set out in the decision letter dated 30 November 2017. Again, I would refer you to the ICO's decision in FS50680102: for the reasoning, see below.

For the sake of brevity I have not repeated all the points made in our original decision letter but I do want to respond to a number of the additional points that you have raised.

### **Relevance of the ICO's decision in FS50680102**

As you note, the ICO's decision in FS50680102 concerned information relating to East of England Ambulance Service and SSG Health in the 3 month period prior to 22 December 2016. Clearly this pre-dated the information you have requested. It concerned an earlier phase of the same Financial Improvement Programme ("FIP").

However, in my view the ICO's assessment of the application of the exemption under section 31 (and section 33) of the FOI Act in that case is highly relevant to your subsequent request. In particular I would note:

- (a) paragraph's 19 and 20 of the ICO's decision, which reference the circumstances in which SSG were appointed and NHS Improvement's regulatory functions
- (b) the information concerned the financial performance and financial management of the Trust and that the issues were "being used to inform any regulatory action NHSI may take"
- (c) at paragraph 23 the Commissioner accepted NHS Improvement's view that disclosure of information which had been voluntarily provided "could have a prejudicial effect on future determinations of regulatory action as it may lead to an unwillingness to provide information on a voluntary basis"
- (d) at paragraph 26, the Commissioner accepted that if information that been obtained voluntarily was disclosed "it may require NHSI to exercise formal regulatory powers and that this "would be likely to lead to delays and inefficiency in the regulatory process"
- (e) for these reasons, the Commissioner accepted that NHS Improvement had demonstrated that prejudice to its regulatory functions would be like to occur.

In my view this analysis has direct application to the material which you have now requested. Whilst it relates to a second phase of the FIP, the issues are still live. The information was obtained as part of the FIP and was designed to assist the Trust in identifying and implementing financial savings. The information was also needed to inform any regulatory action that NHS Improvement might take to address the performance of the Trust. In that context disclosure would be likely to prejudice future regulatory action since providers could be less willing to share information voluntarily.

For these reasons, and applying the Commissioner's decision in FS50680102, I consider that the information requested is exempt from disclosure under section 31 of the FOI Act. This exemption is of course subject to the public interest test.

## **The Public Interest Test**

I refer you to the original decision of 30 November 2017, which in my view correctly applies the public interest balancing test. I would also refer you to the Commissioner's decision in FS50680102, and in particular paragraphs 35-40 which specifically address the factors which are applicable in this case.

I note your further comments on the public interest in disclosure. In summary, the points you advance are:

- (a) the Trust's operational performance is inadequate
- (b) there is legitimate public interest in expenditure on "additional management layers and high-end lease cars for senior managers"
- (c) concerns have been expressed about ambulance delays
- (d) concerns have also been expressed about the working conditions of front line staff
- (e) SSG advised the trust about changes to meal breaks and end of shift arrangements
- (f) the information is a "historical presentation" which is unlikely to prejudice future relationships or discussions.

I agree with you that the Trust's operational performance ((a) and (c) above) is a matter of legitimate public interest, as is expenditure of public monies (b). Those points were recognised in the original decision letter. However, I do not accept that the information requested is simply a "historical presentation" since it assesses the Trust's ongoing financial performance in this financial year (2017/18).

Further, I understand that the Trust wrote to you on 23 August 2017:

- (1) noting that the Trust's response to SSG's analysis had not been finalised and that it was unlikely to be complete until the Independent Service Review (ISR) had been completed,
- (2) stating that the SSG presentation will be shared with you after the Trust receives the ISR, which is likely to be sometime in March 2018.

These seem to me to be factors which should properly be weighted when considering the balance of the public interest.

Taking all these factors into account, and noting the Trust's commitment to providing you with a copy of the SSG presentation shortly, I have decided that the public interest in this case is better served by withholding the information.

## **Review rights**

If you are not content with the outcome of this 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.

### **Publication**

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Yours sincerely,

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

**Andrew Rawstron**  
Legal Director