

16 January 2018

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 ██████████

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

I refer to your email of 17 November 2017 in which you requested an internal review of NHS Improvement’s decision dated 17 November 2017 in relation to your FOI Act request dated 21 October 2017 in which 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.”

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/ the NHS TDA.

Decision

In her decision of 17 November 2017, Ms Dahlstrom decided to withhold the information on the basis that it fell within section 36(2)(b)(i) and (ii), and section 36(2)(c) of the FOI Act (prejudice to the effective conduct of public affairs) and that the public interest in maintaining the exemption outweighed the public interest in disclosure.

I have now conducted a review of that decision and the original decision has been upheld. I have decided to withhold all of the information that NHS Improvement 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

This exemption continues to be engaged as NHS Improvement’s qualified person, Ian Dalton (Chief Executive Officer), is of the opinion that the disclosure of this information would inhibit the free and frank provision of advice and 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)).

Section 36(2)(b)(i) and (ii) – free and frank provision of advice, and free and frank exchange of views for the purposes of deliberation

In order to carry out NHS Improvement's statutory functions, senior members of staff must be able to express themselves openly, honestly and completely when advising NHS Improvement's committees and its Board. On receipt of advice, the NHS Improvement Board needs to be able to hold the free and frank exchange of views on recommendations put to it without fear of public disclosure, in particular where policy is not yet settled.

In this case, the information concerns provider policy development, the development of new care models with NHS England and NHS trust powers. It references sensitive policy discussions with providers, the Care Quality Commission (CQC) and the Department of Health (DH), touching on potential changes to subordinate legislation. NHS Improvement's Board needs clear recommendations on these issues in order to develop policy and must be able to hold free and frank discussions on these issues in order to make effective decisions. Each of the policy questions addressed in the paper remains live and subject to further development. NHS Improvement's Board needs a safe space to develop policy on these issues without concern that the detail of those discussions or that advice will be disclosed. If this material was published it would restrict the candour and frankness with which future discussions would be conducted as individuals would be concerned about the possibility that advice, views and discussions would be made public. The result is likely to be a chilling effect on the further development of those discussions and would also be likely to inhibit the quality of advice and discussions on other policy issues. That outcome would have an adverse impact on the ability of NHS Improvement to develop effective policy and carry out its functions.

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

The paper contains advice and recommendations about policy issues which are still live and subject to further consideration by NHS Improvement's Board, engagement with DH and other sector stakeholders and are likely to be subject to public consultation. Premature disclosure of the information in advance of a settled position being reached, agreed with the DH and other stakeholders, and in advance of potential consultation would be likely to adversely affect NHS Improvement's ability to effectively develop policy with others which, in turn, would be likely to prejudice the effective conduct of public affairs.

Public interest test

My view is that in each case the public interest in maintaining the exemption outweighs the public interest in disclosure.

In considering the balance, I have considered the public interest in transparency and openness in relation to decisions by public bodies, in particular decisions affecting the NHS. In the present case, there is a public interest in patients and the public understanding the development of NHS Improvement and related policy.

I have however also considered the strong public interest in NHS Improvement's Board being able to receive open and candid advice and recommendations on developing policy matters, to hold free and frank discussions about policy development, and generally having a safe space to develop policy, without concern that the detail of those discussions will be disclosed whilst the issues remain live. I have also had regard to the fact that NHS Improvement publishes information about its settled provider policy, including the development of new care models.

I 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 (i.e. it was more probable than not that prejudice would occur).

Taking into account these considerations, my decision is that the balance of public interest is best served by withholding the information requested.

Review rights

If you are not content with the outcome of the 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.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'SB' with some flourishes.

Sofia Bernsand
Deputy Head of Governance