

3 July 2017

Wellington House
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London SE1 8UC

By email

T: 020 3747 0000
E: nhsi.enquiries@nhs.uk
W: improvement.nhs.uk

Dear [REDACTED]

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

I refer to your email of 31 May 2017 in which you requested an internal review of NHS Improvement's decision dated 26 May 2017 in relation to your FOI Act request dated 27 April 2017. Since 1 April 2016, Monitor and the NHS Trust Development Authority (the "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.

For the reasons outlined below, I have decided to uphold in part NHS Improvement's decision but to release some further information which was originally withheld.

Your original FOI request

You requested the following information:

1. Please [...] provide a full disclosure of all departments within your organisation, showing all positions within those departments with all communication information for all those positions to include telephone numbers, email addresses and or postal addresses.
2. I would request the disclosure of all named staff held by the telephony staff be included with their position [...]
3. I would request that you also include the names of any staff currently holding any position within your organisation which does not appear in your telephone contact list from the top down to any deputy head of any department or identified sub section of any department.
4. Kindly provide any policy or procedure in place which allows your staff to refuse to facilitate contact between a member of the public and one of your employees.
5. Please also provide any policy or procedure which would allow a member of the public to appeal against or challenge any such decision.

6. If no such policy or procedure regarding the blocking of contact exists please provide any policy or procedure which details any action or sanction that can be taken against any member of staff found to have blocked communication of information from your organisation to a member of the public.

On 26 May 2017, NHS Improvement decided that some of the information requested should be withheld on the basis of the application of the exemption in section 40 of the FOI Act.

Your internal review request

On 31 May 2017, you requested a review of NHS Improvement's decision in relation to points one and two above.

You have asked us to provide any information that we hold as to why the publishing of names of staff which we did include on the organisation structure chart sent to you on 26 May 2017 is not considered as a breach of the data protection principles such as a signed permission slip authorising the publication of their personal information or excerpt from their contract of employment which allows such information to be published. We have addressed your request in our letter to you of 23 June 2017.

You have questioned why the names of staff have been redacted when these names have been published internally *"thereby processing personal information which you claim is exempt, to all employees of your organisation"*.

You have asked how many employees are part of NHS Improvement and of those employees how many have their names appear on internal documentation for all other employees to view and or access *"in breach of the requirements of the first data protection principle and any information you hold which exempts this from breaching the DPA?"* We have addressed your request in our letter to you of 23 June 2017.

You provided a link to an internet page which contains names of people who you state work for NHS Improvement claiming that the publishing of their names is a direct breach of the data protection principles unless they have already given permission for that disclosure. You have asked us to identify which of these names work for NHS Improvement and to identify all other names of other employees we have published on any web sites controlled by the NHS. We have addressed your request for this information in our letter to you of 23 June 2017 and 30 June 2017.

You have noted that if any names of staff appear on any publicly accessible web page controlled by the NHS and those individuals have issued permission for their information be disclosed, NHS Improvement's decision not to disclose those names is an offence under the FOI Act.

Finally, you have requested the contact details of staff which have been published internally or externally to NHS Improvement or who have given permission for their details to be published. The contact details of staff are published on an internal telephone directory which you requested at item 2 of your original request as is the subject of this review. We have

addressed your request for the contact details of staff which have been published externally in our letter to you of 23 June 2017.

Decision

I have now conducted a review of that decision and the original decision has been upheld in part on the basis of section 40, but I have decided to disclose some further information.

Section 40 – personal data

In his letter of 26 May 2017, Mr Grimes explained that NHS Improvement had decided to disclose the organisational structure chart with the names of postholders where the individuals were at the level of "Executive Senior Manager". The names of postholders below this level were withheld from disclosure based on the explanation of the application of section 40 that followed.

In that letter, he explained that NHS Improvement had decided to withhold the staff directory for the same reason.

Mr Grimes explained that disclosure of the withheld information would satisfy the first condition under section 40(3)(a)(i) of the FOI Act, namely that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully). This was on the basis that staff below the position of Executive Senior Manager have a reasonable expectation that their names would not be disclosed and that all NHSI Improvement staff would have a reasonable expectation that their telephone numbers would not be disclosed. Disclosing this information without consent would amount to unfair processing and a breach of the first data protection principle.

As section 40 is an absolute exemption, consideration of the public interest test was not required.

Decision to withhold information

I have considered whether the requested information under points 1 and 2 of your request is exempt from disclosure under section 40(2) of the FOI Act which provides that information is exempt information if one of two conditions is met, the relevant one here being whether its disclosure would contravene any of the data protection principles (section 40(3)(a)(i)).

Firstly, I am satisfied that the requested information constitutes personal data as defined by the Data Protection Act 1988 (the "DPA") (as the data relates to living individuals and those individuals can be identified from that data).

Secondly, as the requested information concerns other people's personal data and not your own, it falls within the scope of section 40(2) of the FOI Act.

Section 40(2) states that requested information is exempt from disclosure if the first or the second condition at section 40(3) of the FOI Act is satisfied. I have considered whether

disclosure of the information outside of the FOI Act would contravene the first condition: any of the data protection principles.

The data protection principles mean the principles set out in Part I of Schedule 1 to the DPA.

The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

As a starting point, I have therefore considered whether the disclosure of the requested information would be fair.

I consider that that disclosure of the names of employees below the level of Executive Senior Manager and the telephone numbers, email addresses and postal addresses of all staff would amount to a breach of the first data protection principle for the reasons set out below.

The Department of Health's Pay Framework for Very Senior Managers in Arms-Length Bodies (Special Health Authorities and Executive Non-Departmental Public Bodies)¹ sets the banding for posts at Monitor and the TDA in this category. NHS Improvement uses the term Executive Senior Manager in place of Very Senior Manager.

Positions at this level (and above) are very senior and public facing; with the individuals having responsibility for explaining NHS Improvement's actions or policies to the public. We consider that employees below this grade, at the time they joined NHS Improvement and at the time of the request, would not have had a reasonable expectation that their names, telephone numbers, email addresses and postal addresses would be disclosed into the public domain. They are typically less likely to be in public roles so have a lesser expectation than those at the level of Executive Senior Manager of their names being disclosed.

We also consider that there is a possibility that the staff affected may be distressed by the disclosure of their names and contact details as it is reasonable to foresee that disclosure of this information would lead to unsolicited contact from third parties. Further we consider that those employed at the level of Executive Senior Manager have a reasonable expectation that their individual contact details will not be disclosed to members of the public for this reason.

We have balanced these considerations against the following legitimate interests in disclosure to the public. We recognise that there is a general public interest in transparency, and, in particular, the way in which NHS Improvement operates. However, we do not

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240303/Pay_Framework_25_April.pdf

consider that this public interest is served by the disclosure of the names of employees below the level of Executive Senior Manager nor by the disclosure of the contact details of those employed more generally by NHS Improvement. We do not consider that this would add to the transparency or accountability of NHS Improvement's regulatory activities or the way in which it discharges its functions. Even if it could be argued that there was a public interest which could be served by the disclosure of the requested information, we do not consider that it would outweigh the rights and interests of NHS Improvement's staff as identified above.

I therefore agree with Mr Grimes' view that disclosing the personal data of employees below the position of Executive Senior Manager without their consent would amount to unfair processing and a breach of the first data protection principle. In addition, I consider this to be the case for the contact information of those at the position of Executive Senior Manager (or above). I consider that the information is therefore exempt under section 40(2) of the FOI Act. That exemption is an absolute exemption and is not subject to the public interest test under the Act.

Decision to disclose information

I have reviewed your request and the information that was disclosed to you on 26 May 2017. I consider that some additional information could have been released, that is the names of those people at Executive Senior Manager level or above which were not included in the organisation chart sent to you.

Disclosing these names would only be fair if one of the conditions at Schedule 2 of the DPA is satisfied: either the individuals have consented to the release or there is a necessary legitimate interest in disclosing the information. For the reasons discussed above, in the absence of consent, I do not consider that the disclosure of these names is necessary for the purposes of a legitimate interest. We have therefore sought consent from Executive Senior Managers at NHS Improvement and the names of those that have been able to respond in the time available are attached at Annex A.

In addition, I consider that you should have been provided with the contact information for the names that have been released. Please find these details below:

Postal address: Wellington House, 133-155 Waterloo Road, London, SE1 8UG

Tel no: 0300 123 2257

Email: enquiries@improvement.nhs.uk

Other points raised in your request for a review

Finally, you have asked how the names that were redacted in the organisation chart sent to you have been published internally "*thereby processing personal information which you claim is exempt*". We do not consider publishing these names internally to be a breach of the data protection principles and we consider it to be fair and lawful processing as staff would expect their names to be handled in this way.

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 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,



pp

Tim Jones
Director of Communications

Encs

Annex

Annex

Names of Executive Senior Managers²

- Andrew Hines, Regional Chief Operating Officer
- Lee Outhwaite, Business Director
- Frances Steele, Delivery and Improvement Director- North Midlands
- Siobhan Heathfield, Regional Nurse
- Mark Cubbon, Regional Chief Operating Officer
- Warren Brown, Delivery and Improvement Director- Y&H
- Anthony Baldasera, Regional Chief Operating
- Claudia Griffith, Regional Chief Operating Officer
- Nigel Coomber, Director of Elective Care Improvement
- Suzie Bailey, Director of Leadership and Quality Improvement
- Bernard Quinn, Programme Director
- Russell Emeny, Director of Emergency Care Improvement
- Miranda Carter, Director of M&A & New Organisational Models
- David Robertson, Business Director
- Iain Wallen, Director of Informatics & Analytics
- Peter Sinden, Chief Technology Officer
- Elizabeth O'Mahony, Director of Finance
- Jacqueline McKenna, Director of Nursing- Professional Leadership
- Angela Helleur, Improvement Director
- Marie-Noelle Orzel, Improvement Director
- Alison Tong, Improvement Director
- Richard Wilson, Director of Quality Intelligence and Insight
- Caroline Beardall, Director of Organisational Effectiveness
- Janice Scanlan, Head of NED Appointments
- Amanda Lyons, Director of Improvement and Delivery – South Central

² Those who have consented to the release of their names (in the time available)

