

31 July 2017

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██████████  
██████  
**By email**  
████████████████████

Dear ██████████

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

I refer to your email of 30 June in which you requested an internal review of NHS Improvement’s decision dated 28 June 2017.

In your email you requested the following information:

*“Please may I have a copy of the RTT report on the investigation into Kettering General Hospital Trust.*

*I would also like copies of all correspondence relating to the RTT between NHSI and the trust and background paperwork and content of interviews with the trust.*

*For clarity, I have included a copy of the minutes from the Council of Governors. It refers to the report being produced around June 2016.*

*(Kettering General Hospital Trust Council of Governors minutes June 2016*

*RTT Data*

*Mr Foster reported that the formal investigation work surrounding RTT data had now been undertaken by NHSI with the validation of records. NHSI had received an immense amount of paperwork and had recently conducted interviews with staff involved in waiting list management including the Executive team. NHSI would next be producing a report based on their investigation, which, once presented to their own internal scrutiny committee, would be released back to the Trust.*

*It was noted that although the investigation was over, NHSI were likely to add legal undertakings to the Trust about managing risk in IT data management and risk reporting.)*

*Since 1 April 2016, [Monitor and the NHS Trust Development Authority] are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means [Monitor/ the TDA].”*

In our response dated 28 June 2017 we decided to withhold some of the information on the basis of the application of the exemption set out in section 31 of the FOI Act. You have now asked us to reconsider the application of section 31(2)(c) of the FOI Act and the “prejudice” test.

### **Review Decision**

Having undertaken a full review of your original request and considered again the information that is held by NHS improvement, I have decided to uphold the decision on the grounds set out in our letter of 28 June 2017, namely the application of sections 31 and 40 of the FOI Act.

I note that you specifically reference the application of section 31 and that, in your view *“the public interest in disclosure of information relating to the potential harm to several hundred patients outweighs any public interest in preventing any potential prejudice to your regulatory action”*. The public interest test requires consideration of whether, in all the circumstances of the case, the public interest in maintaining the exemption from disclosure outweighs the public interest in disclosing information.

I accept that there is a clear public interest in providing for transparency in relation to the RTT failings at the trust. As a provider of publically funded health services, the trust should be publically accountable for the quality of care provided. I also accept that there is a public interest in understanding how NHS Improvement carries out its functions in relation to the quality of care provided by NHS foundation trusts. These factors are not insignificant and clearly favour disclosure of information in relation the failings that have been identified.

However, I also consider that there is also a strong public interest in NHS Improvement being able to oversee and regulate NHS foundation trusts effectively, and the need to ensure that trusts are able to share confidential or sensitive information with NHS Improvement for the purpose of informing its regulatory response.

In assessing the public interest I consider that it is relevant to consider whether information is in the public domain. the outcome of NHS Improvement’s RTT investigation, referred to in your FOI request, was that NHS Improvement put in place enforcement undertakings under section 106 of the Health and Social Care Act 2012. These undertakings set out details of the RTT concerns which you reference, our findings in relation to compliance with the trust’s licence and the measures that NHS Improvement requires the trust to put in place in order to address those concerns and return to compliance. A copy of these undertakings can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/559670/Kettering\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559670/Kettering_1_.pdf).

In addition, NHS Improvement took further enforcement action in the form of an additional amendment licence condition, imposed under 111 of the Health and Social Care Act 2012. Details of the additional licence condition can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/559671/Kettering\\_2\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559671/Kettering_2_1_.pdf).

Taking all these factors into account and having considered the different arguments, my opinion is that in this case the public interest is, on balance, best served by withholding the information requested under section 31 of the FOI Act.

Please note that NHS foundation trusts, NHS trusts, and the Department of Health are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act. In particular, Kettering General Hospital can be contacted to provide you with information regarding RTT that has been published by the trust in relation to any recent FOI Act requests it has received. Information released in relation to previous FOI Act requests may also be available on the trust's website.

### **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,



**Frances Shattock**

Delivery and Improvement Director – East of England

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.