

25 March 2019

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

Dear ██████████

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

I refer to your email of 26 February 2019 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

### **Your request**

You made the following request:

*“Further to the Department of Health’s transfer of it’s Activity Database (ADB) to the private sector, effective from 31st December 2016, I write to request under the Freedom of Information Act an electronic copy of the content of ADB retained and owned by the Department as Crown material, including room data sheets, AutoCAD room layout drawings and equipment schedules. This information may have been transferred to NHSI as part and parcel of the 1st February 2016 transfer of the NHS Estates & Facilities Management Function to NHSI from DH.”*

### **Decision**

NHS Improvement holds the information that you have requested and has decided to withhold all of the information that it holds under section 43 of the FOI Act.

### **About the Activity Database (ADB)**

ADB is a computerised package produced by the Department of Health and Social Care (DHSC) to assist healthcare planners, architects, and teams involved in the briefing, design and equipping of healthcare environments. The content is developed from the technical guidance. Provision of the technical solution and a helpdesk service was delivered externally by a third party provider, Talon Solutions Ltd (referred to as ‘Talon’), which has delivered the service for over 20 years.

ADB assists NHS trusts in the planning of their estate. It takes the space information provided across the Guidance and uses it as one of the first stages of planning facilities building. For instance, if a consultancy room is needed, ADB provides the appropriate size and specifications which can then be integrated into the design of the facility. Changes can then be made to reflect specific local needs, but using ADB speeds up the building design and reduces errors and issues.

Whilst originally produced by DHSC, ADB was further developed by the NHS Estates and Facilities team and proved useful to the NHS, generating profits which were reinvested into Guidance development. Its use is mandatory in Scotland. DHSC ended its involvement with ADB in December 2016, concluding that there is an on-going requirement for the technical guidance, but that ADB is not a core function. An option to try to retain the availability of ADB in the marketplace was sought and Talon who were the technical support providers took over DHSC's role under the current licences on 1st January 2017.

On 1st February 2017, the NHS Estates and Facilities team transferred from the DHSC to NHS Improvement.

#### Section 43 – commercial interests

Section 43(2) provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

I consider disclosure of the ADB would be likely harm the commercial interests of NHS Improvement and Talon. As explained above, the ADB has been developed by the NHS Estates and Facilities team and has generated profits by selling licenses on to customers across the UK and abroad.

I consider disclosure would enable competitors to use such information to their advantage to the detriment of our and Talon's legitimate commercial interests. The information could be used by third party organisations to sell licences of the ADB. Additionally, parties seeking to negotiate contracts with providers could use this information to strengthen their own bargaining position when negotiating for, or providing services to, that provider.

#### *Public interest test*

Section 43 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemptions should be maintained. I recognise that there is a public interest test in the activities conducted by public authorities. However, I have also considered the strong public interest in protecting the commercial interests of businesses who work with public organisations and our own commercial interests when procuring services for the public sector. Overall I consider the public interest is best served by withholding the information requested.

#### Review rights

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, 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](mailto: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,

**Michael Bellas**  
Director and Policy Lead