

16 October 2018

██████████
By email
██

Dear ██████████

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

We refer to your email of 18 September 2018 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:

“I note that NHS England and NHS Improvement has used executive search firms Odgers Berndston and Russell Reynolds to recruit its new Chief Financial Officer and Regional Directors.

Please could you confirm:

- *the scope of these services provided*
- *the cost of the above services*
- *the rationale for selecting this company rather than others, particularly if others were cheaper*
- *the tender documentation and proposal submitted by the firm*

Please also release the above proposal or tender documentation in full, but redacted as appropriate.”

Decision

NHS Improvement holds the information that you have requested and has decided to release some of the information it holds. Some of the information is being withheld under section 43 of the FOI Act, as explained in detail below.

The scope of the services provided by Odgers Berndston and Russell Reynolds covered the following: recruitment campaign management, candidate search and attraction, candidate assessment and evaluation. The proposals received were assessed through a combination of both Quality evaluation criteria (five in total) and a Price assessment. These assessments were combined to rank all the bids received. The evaluation was undertaken by a panel of NHS Improvement and NHS England staff. The criteria was made available to all bidders in advance of the proposal submission deadline.

We confirm we hold the costs of the services and the tender documentation / proposal submitted by the firms but are withholding this under section 43(2) of the FOI Act.

Section 43(2) of the FOI Act states that:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”

The Information Commissioner’s relevant guidance states that:

“...a commercial interest relates to a person’s ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services”

We consider that the commercial interests of the executive search firms would be likely to be prejudiced if this information is disclosed. The tender documentation showcases their methodology and expertise which is unique to each bidder and will provide an insight into how Odgers Berndston and Russell Reynolds structure their bids.

Disclosure of the fees and pricing arrangements into the public domain would be likely to disadvantage them in competing for work against other providers. If their competitors were to be aware of their fees and day rates, they could effectively price themselves below the executive search firms, which would give them an unfair advantage in future tenders. Price is a heavily weighted factor which is individual to each company’s pricing strategies.

As this is a qualified exemption we must consider whether the public interest in withholding the information outweighs the public interest in disclosing it. We have considered the public interest in promoting accountability and transparency by public authorities for decisions taken by them and the spending of public money. However, we have also taken into account the strong public interest of ensuring that organisations are able to compete equitably and fairly and that there is competition for public sector contracts. We also consider it is important for future procurements to be able to proceed in an environment where free and fair competition is possible; and so achieve the best value for public funds. On balance, we consider that the public interest in withholding the information outweighs the public interest in disclosing it.

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.

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,

NHS Improvement