

21 June 2018

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By email

Dear [REDACTED],

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

I refer to your email of **23 May 2018** in which you requested information under the FOI Act from NHS Improvement. 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 and the NHS TDA.

### **Your request**

You made the following request:

*“I would like to see a copy of the deep dive review into risk management in the London and North regions please.”*

### **Decision**

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemption in section 36 of the FOI Act as explained in detail below.

### **Section 36 – prejudice to the effective conduct of public affairs**

NHS Improvement has decided to withhold the information requested on the basis that it falls within sections 36(2)(b)(i) and (ii) of the FOI Act (prejudice to the effective conduct of public affairs).

The exemption is engaged as NHS Improvement's qualified person (Ian Dalton, Chief Executive) is of the opinion that disclosure of this information would inhibit the free and frank exchange of advice and/or the free and frank exchange of views for the purposes of deliberation (sections 36(2)(b)(i) and (ii)).

The information being withheld consists of a paper presented to NHS Improvement's Audit and Risk Assurance Committee in relation to how risk is managed in the London and North regions. In order to carry out its statutory functions NHS Improvement must be able to hold free and frank discussions about the risks it faces in relation to the regulation of providers in the regions and advise on the same, without concern that the detail of those discussions or that advice will be disclosed. If this material were published, it would restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. The result would be an adverse impact on the ability of NHS Improvement to develop an effective approach to handling risks in its regulation of providers.

#### *Public interest test*

This exemption is subject to a public interest test. NHS Improvement's view is that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosure. In considering the balance, we have considered the public interest in transparency and openness in relation to decisions by public bodies, particularly decisions affecting the NHS.

We have however also considered the strong public interest in NHS Improvement being able to hold free and frank discussions about risk, and advice on handling those risks, without concern that the detail of those discussions will be disclosed. NHS Improvement has also considered the strong public interest in the Audit and Risk Assurance Committee of NHS Improvement having a safe space in which to consider all the advice and views provided to it in relation to risks the organisation faces in regulating providers in the region without concern that those details will be disclosed inappropriately. There is a public interest in ensuring that the Audit and Risk Assurance Committee of NHS Improvement is able to have the open and confidential discussions necessary to ensure the development of an effective approach to regulatory risks. The public interest lies in a sensible, well considered approach to regulatory risks which can only come about when a safe space is provided in which to formulate and develop such an approach. By disclosing the review into risk management in the London and North regions and undermining such a 'safe space' for the approach to regulatory risks to be considered, the quality of NHS Improvement's approach in the future would be negatively impacted, which would not be in the public interest. We have also taken into account that, in relation to the risk that disclosure would prejudice the effective conduct of public affairs, the opinion of the NHS Improvement's qualified person was that the prejudice would occur (i.e. it was more probable than not that the prejudice would occur) which increases the public interest in withholding the information.

In addition, we have taken into consideration that the annual reports of Monitor and the NHS Trust Development Authority include information on the principal risks faced by NHS Improvement along with mitigating actions taken by NHS Improvement to manage the risks. NHS Improvement is of the view that the information on risks to be published within its

annual report, in part addresses the public interest in transparency in relation to the risks the organisation faces.

Taking into account these considerations, our decision is that the balance of public interest is in withholding this information.

### **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,

**Steve Russell**

Executive Regional Managing Director (London)