

07 March 2018

██████████

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By email

████████████████████

Dear ██████████,

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

I refer to your email of **7 February 2018** in which you requested information under the FOI Act from NHS Improvement. 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 and the TDA.

Your request

You made the following request:

“I would like to see a copy of the report or similar documentation produced for NHS Improvement by Bladonmore Europe.

In December NHSI paid them £47k for an "External evaluation of the Regulation Directorate".

Could I also get a copy of the brief Bladonmore were given by NHSI for the work and a copy of the tender notice if it was tendered.”

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemptions in sections 40 and 41 of the FOI Act as explained in detail below.

A copy of the Invitation to Quote is attached to this response and this also contains the brief given by NHS Improvement.

Section 41 – information provided in confidence

NHS Improvement considers that the documents produced for it by Bladonmore are exempt under section 41 of the FOI Act. Section 41(1) provides that information is exempt if:

“(a) it was obtained by the public authority from any other person (including another public authority) and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

The test in section 41(1)(a) is met as the information was obtained by NHS Improvement from a third party, in this case Bladonmore.

The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. This means:

- (i) the information must have the necessary quality of confidence about it;
- (ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) disclosure must amount to an unauthorised use of the information to the detriment of the confider.

The work produced by Bladonmore was based on the responses to staff surveys, workshops and face to face interviews. Bladonmore made it clear to staff that all participation in the programme, whether surveys, workshops or face to face interviews, would be confidential. NHS Improvement considers that disclosure of the information would therefore amount to an actionable breach of confidence.

Section 41 is an absolute exemption and does not require the application of the public interest test under section 2(2) of the FOI Act. However, in considering whether in an action for breach of confidence a confidence should be upheld, a court will have regard to whether the public interest lies in favour of disclosure. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. It is in the public interest for NHS Improvement to be able to seek recommendations in relation to the most effective ways of working. Disclosing the responses of staff provided during participation in the programme would deter staff from participating in any similar exercises in the future. Therefore, in the present circumstances, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence owed to staff who participated in the programme of work.

Section 40 - personal data

NHS Improvement considers that some of the information within the Invitation to Quote is exempt from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data and the first condition under section 40(3)(a)(i) is satisfied. That is that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) as the individuals concerned would have a reasonable expectation that their information would not be disclosed into the public domain.

Section 40 is an absolute exemption and consideration of the public interest test in disclosure is not required.

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 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,

Miranda Carter

Director of M&A and New Care Models