

In addition to this, would it be possible to provide me with a further breakdown of the HR spend from the Corporate Services data 17/18. please could I have the HR spend broken down into each of the following subcategories, split by pay and non-pay costs for each anonymised trust.

- Core HR
- Occupational Health & Wellbeing
- Recruitment
- Temporary Staffing
- Medical Staffing
- Workforce Information and analytics
- Education
- Organisational Development
- Rostering (non-medical)
- HR Specific System and Licences

Alternatively if you are not able to split by trust , please could you provide me with the total costs for each of the above HR sub-categories, split by pay and non-pay costs.

I understand that this would be considered as a new request.”

Decision

NHS Improvement holds the information you have requested and has decided to release some of that information.

Some of the information is being withheld under sections 40, 41 and 43 of the FOI Act.

Interpretation of your request

‘Pay costs’ has been interpreted as pay cost for permanent and temporary staff.

‘Non-pay costs’ directly correlates to terminology used in the corporate services data collection template.

As you have listed the HR sub-functions used in the FY18 corporate services data collection template, then data have been provided on that basis.

Information provided

We have provided the pay costs and non-pay costs for the ten sub-functions you requested in the attached MS Excel data file in an anonymised format (i.e. B1, B2, B3 and so forth). The data included is as per submissions by trusts on the corporate services data collection template with redactions as described below.

Information being withheld

Information relating to a small number of the largest and smallest trusts have been withheld as we consider that even if this were to be disclosed in an anonymised format, it would be possible to identify trusts. We are withholding this information based on sections 41 and 43 of the FOI Act. In addition, we are withholding some information under section 40 of the FOI Act.

Section 41 – information provided in confidence

We consider that some of the withheld information is 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 by third parties, in this case providers. NHS Improvement has a data sharing agreement in place with trusts which enables it to receive this information and use it within the requirements set out in that agreement. Disclosure would result in NHS Improvement being in breach of the agreed terms of data collection.

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.

NHS Improvement considers that disclosure of the information would amount to an actionable breach of confidence for the reasons set out above.

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.

In the present case, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence owed to providers. Providers should be able to share information and concerns with NHS Improvement in the expectation that this will be kept confidential, and this is particularly important in relation to financial information which, if disclosed, may have negative consequences for providers. NHS Improvement considers that it is crucial for trust to be maintained by providers who impart information in such circumstances.

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.

With respect to some untrimmed non-pay costs, we consider disclosure would enable third party providers to determine what their competitors are charging. 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. In addition, competitors may be able to use such information to their advantage to the detriment of that provider's legitimate commercial interests.

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. We recognise that there is a public interest test in the activities conducted by public authorities. However, we have also considered the strong public interest in giving the NHS the ability to negotiate favourable prices when bidding for services. Overall we consider the public interest is best served by withholding the information requested.

Section 40 – personal data

Pay information has been withheld where it relates to an individual's pay within a sub-function where they are the only employee whose pay has been included within that sub-function.

Section 40(2) states that requested information is exempt from disclosure if the first or the second condition at section 40(3A)(a) of the FOI Act is satisfied. We consider that this information is exempt from disclosure under section 40(2) of the FOI Act. This is on the grounds that it amounts to personal data and the first condition under section 40(3A)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed lawfully, fairly and in a transparent manner) as the individuals concerned would have a reasonable expectation that these particular items of personal 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,

Amy Lodge
Head of the Corporate Services Productivity Programme

NHS Improvement