

05 March 2018

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

██████████
By email
████████████████████

Dear ██████████,

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

I refer to your email of 5 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 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 would be very grateful if, under the FoI Act 2000, you could provide:

- a. A list of independent providers of Commissioner Requested Services currently in the NHS Improvement risk assessment and financial oversight regime and;*
- b. A list of any enforcement action taken against such providers in the past 12 months for suspected breaches of the conditions of the NHS license.”*

Decision

NHS Improvement holds the information that you have requested and has decided to withhold the information that it holds on the basis of the applicability of sections 21 and 43 of the FOI Act.

Question A

Section 43(2) of the FOI Act provides an exemption for information, the disclosure of which would or would be likely to prejudice the commercial interests of any person.

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”.

I consider that if we provided the information requested the commercial interests of independent providers of Commissioner Requested Services (CRS) would be likely to be prejudiced. The financial position of a CRS provider is more closely monitored by NHS Improvement than a non-CRS provider. This may (incorrectly) create assumptions about a particular provider depending on whether they designated as a provider of CRS.

Further, a list of CRS providers would reveal which providers are currently providing certain services. It would show, by a process of elimination, who is not on the list. The disclosure of this information would be likely to damage commissioners' ability to commission best value for services. For example, commissioners seeking to negotiate contracts with a provider could use the information to strengthen their own bargaining position and competitors may be able to use such information to their advantage, to the detriment of the providers' legitimate interests and existing suppliers.

Public interest test

Section 43 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained.

I have considered the public interest test in promoting accountability and transparency by public authorities for decisions taken by them and in the spending of public money. However, I do not consider it is in the public interest for independent providers of CRS to have their commercial interests or reputation damaged. I have also taken into account that we publish enforcement action taken against licensed independent healthcare providers. On balance, I consider the public interest is best met by withholding the release of this information.

Question B

Section 21 provides an exemption from the right to know if the information requested is reasonably accessible to the applicant through other means. This is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.

NHS Improvement publishes enforcement action taken against licensed independent healthcare providers. The link below provides further details in this respect:

<https://improvement.nhs.uk/about-us/corporate-publications/publications/regulatory-action-licensed-independent-healthcare-providers/>

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,

Marianne Loynes
Director, Regulation