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20 February 2018

██████████

By email

████████████████████

Dear ██████████,

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

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

Your request

You made the following request:

*I would like to make a request under the Freedom of Information Act please.
i would like to see a copy of the minutes, agenda and papers presented to the most recent meeting of the Joint finance Committee (held by NHSI, NHSE, Department of Health and the Treasury) - see note from NHS Improvement below.*

The Board was provided with an overview of discussions ongoing with NHS England, the Department of Health and HM Treasury on this subject. It was requested that the Joint Finance Committee, on which both NHS England and NHS Improvement were represented, would be used as the mechanism for agreeing a joint position on the additional funding. A meeting of the Joint Finance Committee should be scheduled as a matter of urgency, and where necessary business should be conducted in correspondence.

ACTION: RD/JD

Decision

NHS Improvement does hold 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 36 and 40 of the FOI Act as explained in detail below.

The attached Annex sets out the details of the relevant information that we hold and whether that information is to be disclosed or withheld. Where information is being withheld, we have identified in the Annex those exemptions which we consider to be relevant. The application of exemptions to the information referred to in the Annex is explained in the following paragraphs.

Please note that NHS England, the Department of Health and Social Care and HM Treasury are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act. Please note that neither the Department of Health and Social Care nor HM Treasury was present at the most recent meeting of the Joint Finance Committee, now known as the Joint Finance Advisory Group (“the Advisory Group”).

Section 36(2) – Prejudice to the effective conduct of public affairs

NHS Improvement considers that the exemption in section 36 is engaged as NHS Improvement’s qualified person, the Chief Executive, Ian Dalton, is of the opinion that disclosure of this information would be likely to inhibit the free and frank provision of advice and/ or the free and frank exchange of views for the purposes of deliberation, or otherwise prejudice the conduct of public affairs.

Mr Dalton is of the opinion that disclosing this information would be likely to inhibit staff from NHS Improvement and NHS England from expressing themselves openly and frankly, or from exploring a wide range of options when providing advice or expressing views as part of the process of enabling the Advisory Group to make well-informed decisions. If the authors of those papers knew that the advice and views would be disclosed they would be less likely to share those views so openly and in writing. This could have an impact on the extent and quality of information provided for future papers prepared for the Advisory Group. As the members of the Advisory Group rely on the papers to prepare for and inform their thinking on matters to be considered at the meeting, a lack of comprehensive and detailed information in the papers would be likely to impair the quality of deliberation and decision-making of NHS Improvement and NHS England.

A number of the papers contain detailed evaluation of live issues which have yet to be settled and are subject to further discussion. Some of the information provided to the Advisory Group includes advice, views and recommendations about matters which are not yet in the public domain or have yet to be decided.

NHS Improvement's qualified person is also of the opinion that disclosure of this information would otherwise prejudice the effective conduct of public affairs. The information being withheld consists of papers for a Joint Finance Advisory Group of NHS Improvement and NHS England which contain preliminary views and ideas which are not yet the view of NHS Improvement.

Disclosure of this information would be likely to jeopardise the safe space for the Advisory Group to deliberate and openly discuss financial issues that have an impact on the sector as a whole. That would compromise the quality of discussion and subsequent decision-making.

Further, disclosure of this information would be likely to jeopardise the relationship between NHS Improvement and NHS England which would have a negative impact on effective joint oversight and scrutiny of NHS finances.

Public interest test

Section 36 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemptions should be maintained. My view is that, on balance, the public interest in maintaining these exemptions outweighs the public interest in disclosure.

There is a strong public interest in patients and the public having information about the NHS, including financial information. More openness about finances may lead to greater accountability of NHS Improvement and NHS England, and an improved standard of public debate.

However, I have also considered the strong public interest in allowing NHS Improvement to obtain advice, to share views and opinions and to deliberate policy options and strategies without concern about premature scrutiny. This allows policy and decision-making to be informed by frank and detailed advice and information. This safe working space allows NHS Improvement to perform its functions.

If NHS Improvement and NHS England staff are unable to discuss confidential plans with the Advisory Group, it is likely that future exchanges will be inhibited which will have a detrimental impact on the relationship between NHS Improvement and NHS England which would compromise their ability to provide effective joint oversight and scrutiny of the sector.

NHS Improvement regularly publishes financial information about the sector in quarterly performance reports, for example, [here](#) and NHS trusts regularly publish their own financial information.

Taking all these factors into account, in my view, the public interest is better served by withholding the information in this case.

Section 40 – Personal information

I consider that some information within the agenda 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 individual 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 any information released to you 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,

Jessica Dahlstrom
Head of Governance