

06 July 2018

[REDACTED]
[REDACTED]
[REDACTED]

By email

[REDACTED]

Dear [REDACTED]

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

I refer to your email of 22 May 2018 in which you requested information under the FOI Act from NHS Improvement.

Your request

You made the following request:

1. *Please send the report on the progress of the National Pathology Consolidation Programme, that was discussed at the Operational Productivity Programme Delivery Group meeting on May 8, 2018. (The report is referenced on Page 4 of the following link: https://improvement.nhs.uk/documents/2805/BM1835_Corporate_report.pdf)*
2. *Please also send the minutes, papers, and agendas presented to the meeting on May 8, 2018, of the Operational Productivity Programme Delivery Group.*

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 21, 22, 36 and 40 of the FOI Act as explained in detail below.

Section 21 – Information accessible to applicant via other means

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.

One of the documents within scope of the request is the minutes of the meeting of the Operational Productivity Programme Delivery Group on 13 December 2017. This has been published on the NHS Improvement website in response to a previous FOI request and can be found here:

https://improvement.nhs.uk/documents/2593/OPPDG1801_Minutes_13122017.pdf

Section 22 – Information intended for future publication

Section 22 provides an exemption where information is held by a public authority with a view to future publication, if it is reasonable to withhold the information from disclosure until the date of publication.

NHS Improvement intends to publish the information contained in the attachments to agenda items 4 and 5 in the future.

Therefore the information that you have requested falls within the exemption at section 22 of the FOI Act and this exemption is subject to the public interest test. NHS Improvement considers the public interest in maintaining the exemption is greater than the public interest in disclosing the information. The public interest test will be met by future publication of this information and NHS Improvement considers it is reasonable to withhold this information.

Section 36 – Prejudice to effective conduct of public affairs

NHS Improvement has decided to withhold some of the information requested on the basis that it is exempt from disclosure under section 36(2) of the FOI Act. It is the opinion of NHS Improvement's qualified person (Ian Dalton, Chief Executive) that sections 36(2)(b)(i) and (ii) are applicable. This includes some of the information contained within the minutes of the meeting of the Operational Productivity Programme Delivery Group on 9 May 2018, the action log and the report on Opportunities in Imaging, as well as the annex to agenda item 8.

Sections 36(2)(b)(i) and (ii) state that information is exempt from disclosure if, in the reasonable opinion of a qualified person disclosure would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.

Disclosing some of the information within the minutes and action log would be likely to inhibit staff and committee members from expressing themselves openly and fully, or from exploring options when expressing views as part of the process of enabling the internal committees to make well informed decisions and provide effective advice, in particular, in relation to the implementation of the Carter Review. Disclosure of the information would reduce the candour and frankness with which views in internal committee meetings would be expressed by committee members with the consequent reduction in the quality of the decisions made in relation to the Review.

In relation to papers presented to the Group, which would also constitute advice being provided, we consider that if the authors of the papers knew that all views expressed and advice provided would be disclosed, they would be less likely to express those views and advice in writing and this could have a “chilling effect” in relation to the future drafting of committee papers. As the members of committees rely on the papers to prepare for and inform their thinking on matters to be considered at their meetings, a lack of comprehensive and detailed committee papers could impair the quality of decision making by NHS Improvement.

Public interest test

NHS Improvement acknowledges the general public interest in disclosure of information and the need for public authorities to be open and transparent regarding their decisions. However, the inhibitions as described above under the engagement of section 36 would be likely to affect the internal working of NHS Improvement and therefore the quality of its decisions and effectiveness. This would be against the public interest.

In order to be able to perform its duties effectively NHS Improvement must be able to hold free and frank discussions without concern that the detail of those discussions will be disclosed. Public authorities must be afforded a safe space within which to express themselves openly and fully. If this material were published, it would be likely to 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 to reduce the quality of discussion and advice provided in such cases and have an adverse impact on the quality of material brought forward to internal meetings which would hinder NHS Improvement to effectively meet its objectives.

Section 40 – personal data

We consider that some of the information is exempt from disclosure under section 40(2) and 40(3)(a) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully). This is an absolute exemption and consideration of the public interest test is not required.

The information withheld in the documents released includes names of staff within NHS Improvement.

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,

Jeremy Marlow

Executive Director of Operational Productivity