

19 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 23 January 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 requested the following information:

“I would like to see a copy of the agenda, minutes and papers presented to the last two meetings of the operational Productivity Programme Delivery Group please.”

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold some of the information requested on the applicability of sections 21, 36 and 40 of the FOI Act.

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.

We have published the papers which were presented in the last two meetings of the operational Productivity Programme Delivery Group on the following links:

<https://improvement.nhs.uk/resources/quarterly-performance-nhs-provider-sector-quarter-3-201718/>

Information on the pathology formation network can be found here:

<https://improvement.nhs.uk/resources/pathology-networks/>

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 section 36(2)(b)(ii) and 36(2)(c) is applicable.

Section 36(2)(b)(ii) states 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 exchange of views for the purposes of deliberation.

Disclosing the information within this paper would be likely to inhibit staff within NHS Improvement 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. If the authors of the papers knew that the advice and views would be disclosed, they would be less likely to express those views and advise in writing and this could have a "chilling effect" in relation to future discussions in the operational productivity delivery group. A lack of comprehensive and detailed discussions would be likely to impair the quality of decision making by NHS Improvement.

Section 36(2)(c) states that information is exempt from disclosure if, in the reasonable opinion of a qualified person disclosure would, or would be likely to otherwise prejudice the effective conduct of public affairs. We are withholding the release of the draft regional operating structure. The draft structure is currently for internal use only to inform the recommendations of the OPPDG meeting and is subject to change. Disclosure of the information requested will potentially be misleading to the public and may set a standard for future draft material to be released prematurely. This would be likely to have an adverse impact on the quality of material brought forward to internal meetings which would hinder NHS Improvement to effectively meet its objectives.

NHS Improvement's qualified person (Chief Executive) has approved the use of section 36.

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.

NHS Improvement publishes papers from the OPPDG meeting which we consider meets the public interest in transparency. 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. We must further be able to present documentation which are not finalised to aid these discussions. That is, public authorities must be afforded a

safe space within which to deliberate and discuss matters before making a decision. 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 provided in such cases and have an adverse impact on the ability of NHS Improvement to carry out its functions, which is strongly against the public interest.

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, namely, 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,

Jeremy Marlow

Executive Director of Operational Productivity