

12 April 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 7 February 2018 in which you requested information under the FOI Act from NHS Improvement.

Your request

You made the following request:

The January NHS Improvement board paper on winter (link below) said: “The Autumn Budget announced £337m for the NHS over winter. £150m has been allocated to support costs of winter already incurred by providers, and £137m was available for additional winter schemes, with £50m held by the DH for further discussion.”

https://improvement.nhs.uk/uploads/documents/BM1804_Update_on_winter.pdf

Please provide answers to the following questions:

1. *What were the individual allocations for every provider within NHSI’s remit in terms of funding (£)?*
2. *What did each trust plan to do with their allocation?*
3. *Which body (DH/NHSI/Treasury/NHSE/any other) decided on what allocations each trust would get?*
4. *What reasons were given by DH for withholding £50m of the funding?*

Please provide this information in an Excel spreadsheet.

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 exemption in section 41 of the FOI Act as explained in detail below.

Question 1

NHS Improvement has decided to release this information.

The attached spreadsheet sets out the payments made direct to providers within NHS Improvement's remit.

Question 2

NHS Improvement has decided to withhold this information under section 41 of the FOI Act.

For information, trusts used their allocation on a variety of schemes, services and additional resource across the patient pathway. This includes ensuring that more beds were available to cope with the heightened seasonal demand; increasing staffing in emergency departments; boosting a variety of programmes that can avoid hospital admissions and increase discharge; and working jointly with local authorities to support packages of care.

Section 41 – Information provided in confidence

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 from third parties, in this case providers.

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. The information shared by providers in relation to what any additional funding would be used for was shared by them on an expectation that it would be kept confidential by NHS Improvement.

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. We have considered the public interest in transparency and in disclosing information about expenditure of public funds by NHS bodies. But where a duty of confidence exists, there is a strong public interest in favour of

maintaining that confidence. We also consider that it is crucial for trust to be maintained by providers who impart information openly in such circumstances, and that disclosure of information which is imparted in confidence may inhibit the full and frank disclosure to NHS Improvement of information we need to fulfil our functions. In the present circumstances, therefore, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence.

Please note that NHS trusts and NHS foundation trusts are subject to the FOI Act and as such it is open to you to seek this 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.

Question 3

NHS Improvement and NHS England jointly decided the allocations. This was then agreed with HM Treasury and the Department of Health and Social Care.

Question 4

The full £337m will be available via the Mandate. The Department of Health and Social Care is working with NHS Improvement and NHS England to agree the best allocation of this resource.

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,

NHS Improvement