

5 June 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 **3 May 2018** in which you requested an internal review of NHS Improvement’s decision of 9 April 2018 in relation to your original request under the FOI Act of 21 December 2017 as follows:

“Please provide me with any information held by NHS Improvement (including any local parts) relating to the proposed formation of a wholly owned subsidiary company by Yeovil District Hospital NHS FT.”

In this document, “the trust” refers to Yeovil District Hospital NHS Foundation Trust.

Decision

I have set out below the documents that NHS Improvement holds within the scope of your request, with an explanation of why the information within documents 8, 9, 10, 11, 12 and 14 was originally withheld. I have also included a brief description of my decision on review on the information within those documents.

Where I have decided to uphold the original decision to withhold information, I have detailed my reasons below.

Where material was released to you but with redactions, I have explained the reasons behind the redactions below and set out my decision on those redactions on review.

Where I have decided to release information to you on review (that was previously withheld), this will be provided to you electronically.

You have mentioned other communications in your email of 3 May 2018. We suggest you approach the trust directly if you wish to obtain any information we do not hold which you believe exists, or which we have withheld from disclosure. The trust will need to make its own decision under the FOI Act as to disclosure.

Document no.	Description of information	Date	Original decision	Internal review decision
1	Letter from NHS Improvement to trust	26 July 2017	Released with redactions (redacted)	Upheld

			material out of scope)	
2	Letter from Unison to NHS Improvement	9 October 2017	Released (names and contact details redacted as this is personal information within section 40 of the FOI Act)	Upheld
3	Letter from trust to NHS Improvement	16 October 2017	Released (redacted material out of scope)	Upheld
4	Internal email chain within NHS Improvement (RE: NHS wholly owned subsidiary companies – NHSI only business) with attachment	26 October 2017	Released (names and contact details redacted as this is personal information within section 40 of the FOI Act)	Upheld
5	Internal email chain within NHS Improvement (FW: Northumberland/Airedale – The Guardian – Subsidiaries)	26 October 2017	Released (names and contact details redacted as this is personal information within section 40 of the FOI Act; also some redacted material was out of scope)	Upheld
6	Internal email chain within NHS Improvement	25 October 2017	Released (names and contact details redacted as this is personal information within section 40 of the FOI Act; also some redacted material was out of scope)	Upheld
7	Letter from NHS Improvement to trust	30 November 2017	Released (redacted material was out	Upheld

			of scope)	
8	Email chain between NHS Improvement and trust ("POG Follow up")	9 November 2017	Partially withheld (names and contact details redacted as this is personal information within section 40 of the FOI Act; also some redacted material was out of scope). Part of the (redacted) information was withheld under section 36 of the FOI Act	Upheld in part – information previously withheld under section 36 of the FOI Act is now being withheld under section 41 of the FOI Act
9	Letter from CCG to trust	29 November 2017	Partially withheld – the redacted information was withheld under section 36 of the FOI Act (names and contact details were also redacted under section 40 of the FOI Act)	Upheld in part – information previously withheld under section 36 of the FOI Act is now being withheld under section 41 of the FOI Act
10	Letter from trust to CCG	5 December 2017	Partially withheld – the redacted information was withheld under section 36 of the FOI Act (names and contact details were also redacted under section 40 of the FOI Act)	Upheld in part – information previously withheld under section 36 of the FOI Act is now being withheld under section 41 of the FOI Act
11	Email chain within trust (FW: Savings – counted in CIP plans or Back Office savings)	6 December 2017	Withheld under section 41 of the FOI Act	Upheld

12	Email within trust (FW: Back office update call 7 th July 2017) (with attachment: IMG_2817.JPG; ATT00001.txt)	6 December 2017	Withheld under 41 of the FOI Act	Released (personal information redacted under section 40 of the FOI Act)
13	Email from trust to NHS Improvement	8 December 2017	Released (names and contact details redacted as this is personal information within section 40 of the FOI Act)	Upheld
14	Confidential briefing on Simply Serve	9 November 2017	Withheld under section 41	Upheld

Section 41

Where indicated in the above table, information has been withheld under section 41 of the FOI Act. 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 a third party, in this case the trust.

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 withheld information would amount to an actionable breach of confidence.

The information in question was provided to NHS Improvement in confidence and we consider that providers should be able to share information with NHS Improvement in the expectation that this will be kept confidential. NHS Improvement considers that it is crucial

for trust to be maintained by providers which impart information in such circumstances, and that disclosure of information which is imparted in confidence may inhibit the full and frank disclosure to NHS Improvement of relevant information.

For this reason, I consider that section 41 applies and as it is an absolute exemption, the application of the public interest test under section 2(2) of the FOI Act is not required.

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. I have therefore considered the public interest in disclosing this information but consider that, in the present circumstances, it does not favour disclosure of the information withheld. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. The public (as well as the trusts that we regulate, and stakeholders) would lose confidence in NHS Improvement as a regulator if information provided to it in confidence was disclosed.

Review rights

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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,



Penny Hilton
Head of Delivery and Improvement, South West
NHS Improvement