

24 June 2020

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[REDACTED]
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By email

[REDACTED]

Dear [REDACTED]

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

We refer to your email of 27 May 2020 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 made the following request:

*“Within your publication titled *Performance of the NHS provider sector for the year ended 31 March 2019* ([accessed here](#)) you evidence on page 28 that ‘£271 million on outsourcing’ was spent in regards to elective care. Are you able to provide the list of NHS organisations behind this spend and, if possible, the value spent also?”*

Decision

NHS Improvement holds the information you have requested and has decided to withhold all of the information it holds.

Whilst NHS Improvement publishes the information being requested on an aggregate level (as per our [month 12 2018/19 board report](#)), we consider disclosing this information on an individual provider level basis would impede our ability to effectively perform our functions and are therefore withholding this information under section 31 of the FOI Act.

Section 31(1)(g) of the FOI Act which provides that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2).

NHS Improvement considers that section 31(2)(c) is engaged on the basis that disclosure of the information in question would be likely to prejudice the exercise by NHS Improvement of its regulatory functions for the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of an enactment.

The conditions of the provider licence enable Monitor to regulate the economy, efficiency and effectiveness of NHS foundation trusts under Chapter 3 of Part 3 of the Health and Social Care Act 2012 (“the 2012 Act. NHS Improvement considers that disclosing this information is likely to prejudice the ongoing monitoring by NHS Improvement of providers’ compliance with the licence, which is necessary for NHS Improvement to take into account in deciding whether regulatory action is needed in respect of a failure to comply with the licence.

Section 5 of The National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016 (“the 2016 Directions”) provides that the TDA must exercise its functions with the objective of ensuring that English NHS trusts are able to comply with their duty under section 26 of the NHS Act 2006. Section 26 sets out the general duty of NHS trusts to exercise their functions efficiently, economically and effectively – by, for example, establishing and maintaining best practice and effectively implementing systems and processes.

NHS Improvement relies on the voluntary provision of full and frank information in order to carry out its functions effectively and relies on having a safe space in which both providers and regulatory bodies are able to share information in the knowledge that the information, or any analysis derived directly from it, will not be disclosed more widely. To disclose that information more widely is likely to have a detrimental impact on the quality and content of exchanges between NHS Improvement and the bodies it regulates. This would in turn be likely to have a prejudicial impact on its ability to make effective and fully informed regulatory decisions.

Public interest test

Section 31 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained. We recognise that in relation to the performance of trusts, there is a public interest in transparency. However, we consider that there is a stronger public interest in giving NHS Improvement the space to openly exchange information that relates to NHS Improvement’s functions without disclosing the same to a wider audience and to give the sector the time to address any issues identified without premature disclosure.

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, Skipton House, 80 London Road, London SE1 6LH or by email to nhsi.foi@nhs.net.

Publication

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,

NHS Improvement