

11 June 2020

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██████████  
**By email**  
████████████████████

Dear ██████████

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

We refer to your email of 13 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:

- (1) *“How long the venue - Excel London - is commissioned for use as a hospital*
- (2) *The annual contracted cost of the venue*
- (3) *A copy of the Service Level Agreement/ Comissioned contract”*

### **Decision**

NHS Improvement holds the information you have requested and has decided to release some of the information it holds. Some of the information is being withheld under sections 41 and 43 of the FOI Act.

### **Question 1**

24 March 2020 to 26 June 2020

### **Question 2**

Please refer to the following statements from ExCeL London and the Abu Dhabi National Exhibitions Company regarding the NHS Nightingale Hospital:

<https://www.excel.london/news/nhs-nightingale-statement>

### Question 3

We confirm we hold a copy of the Heads of Terms NHS England has signed with London International Exhibition Centre Plc (LIEC) and a copy of the licence pursuant to those terms but are withholding this information under sections 41 and 43 of the FOI Act.

#### Section 43 – commercial interests

Section 43(2) provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

NHS Improvement considers that disclosure of the would be likely to harm the commercial interests of London International Exhibition Centre Plc (LIEC). NHS Improvement considers disclosure would enable competitors to use such information to their advantage to the detriment of the LIEC's legitimate commercial interests.

We have considered the public interest test in transparency of how NHS Improvement carries out its statutory functions and are satisfied that, in this instance, we consider there is a stronger public interest in withholding this information at this point in time.

#### 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 NHS England.

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 for the reasons set out above by another person.

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. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. In the present circumstances, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence.

### **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](mailto: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**