

12 August 2016

[REDACTED]

Wellington House
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London SE1 8UG

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E: nhsi.enquiries@nhs.net
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By email [REDACTED]

Dear [REDACTED]

Request under the Freedom of Information Act 2000 (the "FOI Act")

I refer to your email of **15 July 2016** in which you requested information under the FOI Act from Monitor. Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor.

Your request

You made the following request:

"Could you please disclose all communication relating to Southern Health NHS Foundation Trust between Carol Bode, then Board Chair of Southern Health NHS Foundation Trust and Monitor (previously Independent Regulator of NHS Trusts), between April 1 2011 and January 30 2012."

Decision

NHS Improvement holds the information that you have requested and has decided to withhold some of this information on the application of section 31, 40 and 41 of the FOI Act, as explained in detail below.

The attached Annex sets out the details of the relevant information held and whether that information is to be disclosed (in whole or in part) or withheld from disclosure.

Where information is to be disclosed to you, it will be provided to you electronically. The application of exemptions to the information referred to in the Annex is explained in the following paragraphs.

Section 31 – law enforcement

I consider that the withheld information is exempt from disclosure under sections 31 of the FOI Act. Section 31(1)(g) provides that information is exempt 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 subsection (2). Section 31(2)(a) covers the purpose of ascertaining whether any person has failed to comply with the law. Section 31(2)(c) covers the purpose of ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of an enactment.

NHS Improvement's role includes monitoring NHS foundation trusts' compliance with their licence. NHS Improvement may take formal action against a foundation trust if it has failed to comply with its licence. Within this context, NHS Improvement requires detailed information from foundation trusts on an on-going basis about matters arising.

Your request includes correspondence from the Chair of Southern Health Foundation Trust ("the Trust") to Monitor (which is now part of NHS Improvement) about issues arising at the Trust. The information includes free and frank views of the Chair as well as confidential information. The disclosure of this information would prejudice NHS Improvement's ability to exercise its regulatory functions.

The effectiveness of NHS Improvement's regulatory action depends on the maintenance of confidentiality and ensuring free, full and frank exchanges with individuals and organisations in relation to any of our enforcement functions. Making available the information requested would prejudice the exercise of NHS Improvement's functions by, among other things:

- deterring providers and other stakeholders from co-operating with NHS Improvement on a voluntary basis;
- decreasing the amount of information supplied voluntarily to NHS Improvement from providers and other stakeholders; and
- disclosing information that is confidential and provided expressly on a confidential basis.

Public interest test

Section 31 is a qualified exemption and therefore requires the application of the public interest test. The public interest in accountability and transparency by making access to the information available has been weighed against the detrimental impact that is likely to ensue if disclosure is permitted.

I consider that there is a strong public interest in allowing NHS Improvement to be able to carry out its functions efficiently and effectively, and to have space to consider, without concern as to publication, whatever information it requires in such circumstances. If confidential information provided to NHS Improvement relating to its oversight role with disclosed, foundation trusts and relevant third parties would be likely to lose confidence in NHS Improvement, or take action to prevent the disclosure of such information.

I have also considered the public interest in disclosing the withheld information, in particular, in the context of the aims and objectives of foundation trusts to be accountable to local people, and also the public interest in NHS Improvement itself being accountable for the oversight role it carries out. NHS Improvement has published a large amount of information

on its website about the performance of the Trust and NHS Improvement's response to issues identified. NHS Improvement took enforcement action against the trust in 2014 and 2016 (full details are available [here](#), including the basis for the action). On 20 June 2016 NHS Improvement published a press release detailing the ongoing work at the Trust (available [here](#)).

In the circumstances, I have concluded that the need to ensure that providers are able to share information with NHS Improvement without fear that such disclosures will enter the public domain outweighs the public interest in disclosure of the information that is being withheld.

Section 40 - personal data

I consider that some of the information is exempt from disclosure under section 40(2) and 40(3)(a) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3)(a) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully). This is an absolute exemption and consideration of the public interest test is not required.

The information withheld includes the personal views of the Chair of the Trust about matters arising at the Trust, which she would have a reasonable expectation would not be disclosed.

Section 41 – information provided in confidence

I consider that some of the information withheld is exempt from disclosure under section 41 of the FOI Act on the grounds that the information was provided in confidence and disclosure of the information to the public would constitute a breach of confidence actionable by the person providing the information.

The information requested includes confidential information about issues arising at the Trust. The information was provided in circumstances giving rise to an obligation of confidence and disclosing the information to the public without consent would amount to an unauthorised use of the information to the detriment of the person providing the information.

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, when determining whether an action for breach of confidence would be likely to succeed it is necessary to consider whether the public interest in favour of disclosure outweighs the interest in withholding the information. In the present circumstances, NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence owed to the provider of the information.

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

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 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,

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Victoria Keilthy
Deputy Regional Director

Annex

Information	Decision on disclosure	Applicable exemptions
Letter dated 27 September 2011 from Paul Streat to Katrina Percy (copying Carole Bode)	Disclose in full	N/A
Letter dated 29 November 2011 from Adam Cayley (copying Carole Bode)	Disclose in full	N/A
Letter dated 21 December 2011 from Carole Bode to Paul Streat	Withhold	31, 40, 41

27 September 2011

Ms Katrina Percy
Chief Executive
Hampshire Partnership NHS Foundation Trust
Trust Headquarters
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SO40 2RZ

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Dear Katrina

Change in governance risk rating to reflect CQC concerns

Following CQC's visit to Antelope House on 11 August, Southern Health NHS Foundation Trust ("the Trust") has been issued with one compliance actions in respect of Regulation 9 Outcome 4 (Care and welfare of people who use services) and Regulation 11 Outcome 7 (Safeguarding people who use services from abuse).

Monitor's regulatory response

Monitor's approach, as set out in the *Compliance Framework 2011-12* (page 25, diagram 11), allocates a service performance score to the level of concern or regulatory action issued by CQC. The service performance score will determine the Trust's governance risk rating.

The Trust has been allocated a points score of 2.0 as a result of compliance actions issued by CQC, and therefore the Trust's governance risk rating will be Amber-Red with immediate effect.

Next steps

NHS foundation trusts are required to maintain full and ongoing registration with the CQC. Should an NHS foundation trust fail to maintain registration, or comply on a timely basis with the requirements of any regulatory actions required of it by the CQC, it risks being in significant breach of its Authorisation.

Monitor will remove the service performance points score upon confirmation from the CQC that their concerns have been lifted, and that the Trust has met the requirements of the compliance action.

If you have any queries relating to the above, please contact me by telephone on 020 7340 2425 or by email (Paul.Streat@monitor-nhsft.gov.uk).

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Streat', with a stylized, cursive script.

Paul Streat

Senior Compliance Manager

cc: Ms Carol Bode, Chair

29/11/2011

Ms Katrina Percy
Chief Executive
Southern Health NHS Foundation Trust
Tatchbury Mount
Calmore
Southampton
SO40 2RZ

Dear Katrina

Quality governance declaration

I am writing to you following the Trust's Quarter 2 2011/12 monitoring submission, as part of which the Trust was unable to provide self-certification against Quality Governance Declaration 1, which requires that the Trust has, and will keep in place, effective arrangements for the purpose of monitoring and continually improving the quality of healthcare provided to its patients.

As you are aware, it is expected that all foundation trusts will strive to maintain and improve quality for the benefit of patients and Monitor considers this to be an important indicator of governance at a trust and, where there is evidence that a board may not be meeting quality of healthcare requirements, Monitor is likely to explore the basis for a board's certification.

The Trust raised its concerns over its quality governance systems at a meeting with Monitor's relationship team on 20 September, and has subsequently provided detail of the issues identified, and the action being taken by the Trust, in subsequent communications.

We understand that:

- the Trust has identified a failing in its quality governance systems within its mental health services following issues identified both internally and through external inspections carried out by CQC;
- the Trust is reviewing the strength and effectiveness of its management structures within its mental health services;
- a revised quality governance system is being implemented and is due to be in place by the end of December 2011;
- actions to address CQC's concerns will be completed by the end of December 2011;

- once in place the effectiveness of the revised quality governance systems will be tested via a rolling series of clinical reviews covering all services over a period of 6 months;
- Deloitte have been engaged to provide assurance over the clinical reviews, as well as support an exercise in assessing how the quality governance failures occurred; and
- the Trust expects to be in a position to sign Quality Governance Declaration 1 by the time of its Q4 2011/12 monitoring submission, due at the end of April 2012.

The above issues arise at a time of significant change within the Trust Board, with the term of office of Carol Bode as Chair due to end on 31 January and the imminent departure of the Medical Director and Managing Director of Specialist Mental Health and Learning Disabilities Services.

Whilst we recognise the action being taken by the Trust to address the issues it has identified, taking the above in to account we have a number of material concerns over which we require further assurance from the Trust. Specifically we are concerned that the Trust:

- does not appear to have a structured programme, signed off and overseen by the Trust Board, to address all of the above issues and ensure the Trust is able to sign Quality Governance Declaration 1 by Quarter 4 2011/12; and
- may not have the leadership and management expertise within its mental health services to ensure that sufficient focus can be applied to driving improvements in quality governance whilst ensuring on-going safe and effective delivery of services.

In order to further explore our concerns we require the Trust to attend a meeting at Monitor's offices during December to provide an update on the issues set out above and any action taken by the Trust to rectify shortfalls. Following this Monitor will determine whether any further regulatory action is required at this time.

The meeting will be chaired by Merav Dover, Compliance Director, and attended by members of Monitor's relationship management team for the Trust. In order to ensure continuity during this time of change for the Trust Board, we expect attendees of this meeting to include yourself and the Trust's Senior Independent Director as well as any other Executive and Non-Executive Directors you deem appropriate.

If you have any queries relating to the matters set out in this letter, please contact your relationship manager, Paul Streat, on 020 7340 2425 or by email Paul.Streat@monitor-nhsft.gov.uk.

Yours sincerely

Adam Cayley

Portfolio Director

Cc: Carol Bode, Chair

Mike Petter, Senior Independent Director