

3 February 2017

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E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

By email

[REDACTED]

Dear [REDACTED]

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

I refer to your email of 6 January in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (NHS TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and NHS TDA.

Your request

You made the following request for information:

“I am writing to you under the Freedom of Information Act 2000 to request the following information from NHS Improvement:

Agency Spend and forecast for the financial year to date (16/17)

1. *Please provide the information broken down by Staff Group (please see example below)*

£m (actual)	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	H1	Oct-16	Nov-16	Dec-16
Medical and Dental	x	x	x	x	x	x	x	x	x	x
Nursing and Midwifery	x	x	x	x	x	x	x	x	x	x
Allied Health Professionals	x	x	x	x	x	x	x	x	x	x
Health Science Services	x	x	x	x	x	x	x	x	x	x
Other	x	x	x	x	x	x	x	x	x	x
TOTAL	252*	254	256	256	252	245	1,514	x	x	x

2. *Please can you also provide the staff group spend data split by adherence to key NHSI rules:*
 - Spend on shift below the NHSI caps
 - Spend on shift above the NHSI caps
 - Through NHSI approved frameworks

- Outside NHSI approved frameworks

3. Please can you also provide a staff group breakdown of the Forecast provided in the Quarterly performance of the provider sector as at 30 September 2016.

£m (forecast)	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	H2
Medical and Dental	x	x	x	x	x	x	x
Nursing and Midwifery	x	x	x	x	x	x	x
Allied Health Professionals	x	x	x	x	x	x	x
Health Science Services	x	x	x	x	x	x	x
Other	x	x	x	x	x	x	x
TOTAL	x	x	x	x	x	x	1,154*

* I have based these on the data provided in your report Quarterly performance of the provider sector as at 30 September 2016.

Having this information available publically will help agencies and agency workers understand their likely future workloads and plan accordingly.

Your help in this matter would be much appreciated.”

Decision

NHS Improvement holds some of the information you have requested. I have decided not to disclose that part of the information which we hold for the reasons set out below.

Part 1

NHS Improvement holds the information pertaining to Part 1 of your request for historical figures on agency spend broken down by staff group. I have decided not to disclose it on the basis that it is shortly due for future publication around February 2017 and therefore section 22 of the FOIA is engaged. Section 22 of the FOI Act provides that information is exempt information if:

- the information is held by the public authority with a view to its publication, by the authority or some other person, at some future date (whether determined or not),
- the information was already held with a view to such publication at the time when the request for information was made, and
- it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

Public Interest Test

Section 22 is a qualified exemption and therefore it requires that a public interest test be carried out to determine whether the exemption should be maintained.

The public interest in accountability and transparency by making access to the information available has been weighed against public interest in withholding at the current time. In recognition of the public interest in transparency, there is already a considerable amount of information published about historical agency spend. For instance, the NHS Improvement website contains trust account data for both NHS trusts and NHS foundation trusts. This information contains total agency costs for each provider and it partially covers the time period of your request. Please see the links below.

FT data:

<https://www.gov.uk/government/publications/nhs-foundation-trust-accounts-consolidation-ftc-files-201516>

NHS Trust Data:

<https://www.gov.uk/government/publications/nhs-trusts-accounts-data-for-2015-to-2016>

NHS Improvement has also recently released information in response to another FOIA request, available below, for agency spend for medical & dental staff, nurses and other staff for Q2, Q3 & Q4 of 2015/16 and the first two quarters of 16/17.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586197/FOI_Trust_spend_on_staff.pdf

Considering the amount of information already available, the imminent publication of the information you have requested and the detriment which would result from a premature and unplanned publication of the information pursuant to your request, I have concluded that the public interest in disclosure of the information is not outweighed by the public interest in withholding the information at this time.

At the time of writing, NHS Improvement does not hold the information in relation to agency spend by staff group for December 2016. However, when available, this will be published as discussed above.

Part 2

We do not hold the information relating to Part 2 of your request.

Part 3

NHS Improvement holds the information relating to Part 3 of your request. I have decided not to release it to you on the basis of exemptions contained section 43 and sections 36(2)(b) and 36(2)(c) of the FOIA.

Commercial Interests (s.43)

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

The information you have requested is forecast financial information relating to trusts. It is inherently commercially sensitive and I consider that its disclosure is likely to be detrimental to the trusts' legitimate commercial interests when contracting with agencies for the use of agency staff. As you say, having this information available will help agencies and agency workers understand their likely future workloads and plan accordingly. Agencies could use the information to strengthen their own bargaining position when negotiating for, or providing services to, a trust. This would be likely to be prejudicial to the Trust's commercial interests in terms of the contracted volume and the rate paid to agencies.

Public Interest

The public interest in accountability and transparency by making access to the information available has been weighed against public interest in withholding. With respect to the public interest in transparency, there is already some information in the public domain about forecast agency spend. As you have noted, we have already provided the overall forecast in the Quarterly performance of the provider sector as at 30 September 2016.

Furthermore, on 11 January 2017, NHS Improvement's CEO Jim Mackey gave evidence to the Public Accounts Committee on financial sustainability in the NHS, alongside Department of Health permanent Secretary Chris Wormald and Simon Stevens. The transcript of the session can be found [here](#). For the exchanges on agency see questions 198-200 on page 61. John Pugh MP asked Mr Mackey about projected figures for agency and contract staff as a percentage of total staff expenditure for 2016-17. This related to figure 9 in this [NAO report on financial sustainability in the NHS](#) page 26. Mr Mackey has responded to the Public Account Committee as follows: NHS Improvement's projected agency spend for 16/17 as a % of total pay bill is in the range of £2.8bn (5.5%) to £3.0bn (5.9%).

Moreover, with respect to the period October 2016 to January 2017, I observe that these time periods are now past and the forecast figures have therefore lost their value in terms of being a predictive tool. I consider that there can be very little public interest in what was forecast for time periods which have since elapsed. The actual figures for these time periods will be published in due course as part of future regular reporting as discussed above.

Considering the amount of information already available, the future publication of the information (once the figures are actual and known) and the detriment which would result from a premature and unplanned publication of the information pursuant to your request, I have concluded that the public interest in disclosure of the information is not outweighed by the public interest in withholding the information at this time.

Prejudice to Public Affairs (s36)

I consider that sections 36(2)(b)(i) and (ii) and 36(2)(c) of the FOIA apply to the information requested meaning that the disclosure of this information would be likely to inhibit the free and frank provision of advice and the exchange of views for the purposes of deliberation and would be likely to prejudice the effective conduct of public affairs. As the information is statistical in nature, i.e. it is numerical in format and has been derived after mathematical processing, it has not been necessary to obtain the opinion of NHS Improvement's qualified

person for the purposes of section 36 before applying these exemptions (section 36(4) of the FOIA).

The creation, collection and analysis of forecast agency spend from trusts is necessary to enable the effective operation and management of actual agency spend in the NHS by Trusts and by NHS Improvement. By their nature, forecast financial figures are sensitive in that they are predictions of future revenue or expenditure based on any number of variables. Disclosure of this information would be likely to damage the relationship and inhibit the free flow of information between NHS Improvement and those it regulates. It would be likely to inhibit NHS Improvement from collecting the same or a similar level of information in the future and Trusts may be less willing to voluntarily share the information. This in turn is likely to be detrimental to NHS Improvement's internal deliberations (as the deliberations would be on a less informed basis) and consequently detrimental to future regulatory agency controls policy. In its disclosure would be likely to inhibit the ability of public authority staff and others to express themselves openly, and on an informed basis, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The net result is that there is likely to be an impact on the ability of NHS Improvement to provide effective and co-ordinated support and management of NHS agency spend within particular staff groups. For this reasons, the disclosure would also be likely to prejudice the effective conduct of public affairs.

Section 36 is subject to a public interest test. For the reasons set out under Public Interest above, I consider that the public interest in disclosure does not outweigh the public interest in withholding the information.

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,

A handwritten signature in black ink that reads "D Raymont". The signature is written in a cursive style with a small crossbar on the 'D'.

Dominic Raymont

Senior Finance Manager – Agency Intelligence Team