

14 December 2015

[REDACTED]  
[REDACTED]

By email [REDACTED]

Dear [REDACTED]

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

I refer to your email of **2 December 2015** in which you requested information under the FOI Act relating to Heart of England NHS Foundation Trust (“the trust”).

#### **Your request**

You made the following request:

*“I can see from a recent response to FoI that part of the role of your Improvement Directors is as follows:*

*Assessing Risk*

*the ID will report to Monitor on progress with improvements, barriers and risks preventing the achievement of plans, the working relationships within the Trust*

*and relationships with stakeholders in the wider sector (e.g. NHS England or CCGs)*

*Please provide us with a copy of each of the reports submitted to Monitor by Diane Whittingham in her role as Improvement Director at Heart of England NHS Foundation Trust that addresses this part of her role.”*

#### **Decision**

Monitor holds the information that you have requested.

Monitor has decided to withhold all the information that it holds on the basis of the applicability of the exemption in section 31 of the FOI Act as explained in detail below.

#### **Section 31**

We consider that the withheld information is exempt from disclosure under section 31(1)(g), 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 subsection (2).

We consider that section 31(2)(a) and section 31(2)(c) are engaged, i.e. that disclosure of the information would be likely to prejudice the exercise by Monitor of its functions for the purposes of either ascertaining whether the trust has failed to comply with the law (section 31(2)(a)) and/or, ascertaining whether circumstances exist which may justify regulatory action in pursuance of an enactment (section 31(2)(c)).

The trust is currently subject to on-going enforcement action. The information Monitor gathers is necessary to enable Monitor to assess whether the trust is in breach of its provider licence and to assess whether any further regulatory action might become necessary. To disclose this information more widely is likely to be prejudicial to the consideration by Monitor as to whether there are new breaches of the trust's provider licence and whether circumstances exist that would justify further regulatory action.

In particular, disclosure of the information within Diane Whittingham's reports remains "live" in forming part of our on-going consideration of the trust's performance.

We also consider that disclosure of information is likely to have a considerable impact on the willingness of the trust to provide such information to us on an open basis, and is likely to lead to less detailed information being provided. We consider that it is absolutely essential that Monitor is able to communicate with the trust in a full and frank manner without concern that matters forming the basis of Monitor's on-going assessment will enter the public domain.

#### *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. The enforcement action that is currently in place in relation to the trust remains live and as such, Monitor is still in the process of reviewing the information that the trust submits pursuant to its requirements under its enforcement undertaking, which includes Diane Whittingham's reports.

Monitor has published a copy of the current enforcement action on its website. Monitor considers that this information is sufficient to meet the public interest in transparency. Monitor will also proactively publish details of any further regulatory action it decides to take as a result of any new concerns.

Monitor has concluded that the need to avoid adversely affecting its continued monitoring and assessment of the trust and the need to ensure that the trust and other foundation trusts are able to share information with Monitor without fear that such disclosures will enter the public domain outweighs the public interest in disclosure of the information that is being withheld.

#### **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 Monitor of the issue or the decision. A senior member of Monitor'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 conducted by Monitor, 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, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [foi@monitor.gov.uk](mailto:foi@monitor.gov.uk).

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, appearing to read 'Rebecca Farmer', with a long horizontal flourish extending to the right.

**Rebecca Farmer**  
Senior Regional Manager