

3 December 2015

[REDACTED]

By email

[REDACTED]

Dear [REDACTED]

The logo for Monitor, featuring the word "Monitor" in a sans-serif font with a blue arc above the "o".

Making the health sector
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Request under the Freedom of Information Act 2000 (the FOI Act)

I refer to your email of 4 November 2015 to our Enquiries team in which you requested information relating to a letter from the Chairman of Central Manchester University Hospitals NHS Foundation Trust ("CMFT").

You requested:

- (1) The response from the Chairman of CMFT to a letter from the Board of University Hospital of South Manchester NHS Foundation Trust ("UHSM") about the current partnership agreement.
- (2) Monitor's letter of response, having been copied into the correspondence.

Decision

Monitor holds the information that you have requested. Monitor has however decided to withhold the letters on the basis of the applicability of the exemption in section 31 of the FOI Act, as explained in detail below.

Section 31 – law enforcement

Monitor considers that the withheld information is exempt from disclosure under section 31(1)(g) and (2)(c), which provides that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice the exercise by Monitor of its functions for the purpose of ascertaining whether circumstances exist which may justify regulatory action in pursuance of an enactment. Monitor is a public authority responsible for monitoring compliance by NHS foundation trusts with the provider licence issued under Part 3 of the Health and Social Care Act 2012, and for considering the exercise of enforcement powers where it is satisfied (or has reasonable grounds to suspect) that such a trust has provided, or is providing, NHS services in breach of the conditions of its licence, and for monitoring compliance with any enforcement action that may be taken.

In order to perform these functions, Monitor relies on information from a variety of sources, including information provided voluntarily by trusts. This may include correspondence which relates to the finances or governance of one or more of those trusts. Disclosure of the withheld letters would have a considerable impact on the willingness of the Trusts and other third parties to provide such information to Monitor on an open basis, and is likely to lead to less or less detailed information being provided. Monitor has statutory powers to require NHS foundation trusts to provide information but we believe we are better able to exercise

our functions when information is provided voluntarily as part of an open relationship between the regulator and the regulated bodies.

In the present case, UHSM is subject to enforcement undertakings under section 106 the Health and Social Care Act 2012 relating to suspected breaches of its licence in relation to financial sustainability and board governance. In addition to the general concern about the prejudice to our relationship with trusts, to disclose the withheld information would also be likely to prejudice Monitor's ongoing review of the progress UHSM is making towards addressing the breaches of its provider licence.

Public interest test

Monitor acknowledges the strong public interest in accountability and transparency in relation to both the actions of NHS foundation trusts and to Monitor's exercise of its regulatory functions. This has been weighed against the detrimental impact that would result if the information was disclosed. In considering the public interest, I have taken into account that Monitor routinely and proactively publishes details of any regulatory action it decides to take as a result of its investigations.

As stated above, UHSM is being closely monitored by way of formal regulatory action. It is vital that in such cases Monitor is able to freely exchange with the Trust, and with relevant third parties (such as CMFT), the information necessary for Monitor to consider the Trust's compliance with its enforcement action and monitor its progress in addressing the breaches of its licence. Any disclosure that would cause trusts to reconsider exchanging potentially sensitive information relevant to Monitor's performance of its enforcement functions would be detrimental to the process of regulation.

Monitor has concluded that the need to avoid adversely affecting its continued monitoring and assessment of this and other trusts, and the need to ensure that trusts and other third parties are able to share information with Monitor without concern that such information 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.

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 blue ink that reads "Shona Milton". The signature is written in a cursive style and is underlined with a single horizontal line.

Shona Milton
Senior Regional Manager