

11 November 2015

[REDACTED]

By email

[REDACTED]

Dear [REDACTED]

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

I refer to your email of 14 October 2015 in which you requested information under the FOI Act.

Your request

You made the following request:

“Copies of all written communications, including emails between the Department of Health and Monitor regarding the publication of NHS foundation trusts: quarterly performance report (quarter 1, 2015/16).”

Decision

Monitor holds the information that you have requested, which consists of information contained in emails between the Department of Health (DH) and Monitor. Monitor has decided to withhold some of the information that it holds on the basis of the applicability of the exemption in section 36(2) of the FOI Act, as explained below.

Monitor has decided to release the documents attached to this letter, with redactions to exclude information on the basis of sections 36(2) and 40(2) of the FOI Act, as explained below.

Section 36(2) – prejudice to the conduct of public affairs

Monitor has decided to withhold some information on the basis that it falls within section 36(2)(b)(ii) and (c) of the FOI Act (prejudice to the conduct of public affairs) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as Monitor’s qualified person, its Chief Executive (at the relevant time David Bennett), is of the opinion that disclosure of this information would inhibit the free

and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)) and would be likely to prejudice the effective conduct of public (section 36(2)(c)). The information being withheld consists of email communications between Monitor and DH about decisions on publication of the NHS foundation trust quarterly report for quarter one 2015/16 ("the Q1 report") and an extract from an email between Monitor and DH about how to respond to a related Parliamentary Question. In order to conduct its regulatory and policy business, the officials of Monitor and DH must be able to hold free and frank discussions about regulatory decisions, both internally and with DH, without concern that the detail of those discussions will be disclosed inappropriately. This includes the exchange of views about decisions as to the publication of important reports relating to the performance of the NHS and as to how to respond to Parliamentary Questions. If this material was published, it would restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. That would have an adverse impact on the ability of Monitor and DH to liaise and co-ordinate effectively on decisions regarding the publication of important reports relating to the NHS (for example being able to have an open and honest exploration of options for publication) and on how to answer Parliamentary Questions.

In addition, disclosure of exchanges between officials at Monitor and DH, which both parties would have expected to remain out of the public domain, would be likely to damage the relationship of trust and confidence between Monitor and DH, as well as inhibit the free flow of information. Monitor relies on a relationship of trust and confidence with DH in order to act effectively as a public regulatory body.

Public interest test

Monitor's view is that the public interest in maintaining the exemption outweighs the public interest in disclosure. In considering the balance, we have considered the public interest in transparency and openness in relation to decisions by public bodies, particularly decisions affecting the NHS. In particular, in the present case, there is a public interest in the public understanding the reasons for decisions about the timing of the important report relating to the performance of a sector of the NHS.

We have also considered, however, the strong public interest in Monitor and DH being able to hold free and frank discussions about regulatory decisions, including the publication of reports such as the quarterly report and responses to Parliamentary Questions, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring Monitor staff are able to have the open and confidential discussions necessary to ensure effective decision making. We have also taken into account that, in relation to the risk that disclosure would inhibit free and frank exchange of views, the opinion of Monitor's qualified person was that the inhibition to the free and frank exchange of views would occur (i.e. it was more probable than not that the prejudice would occur).

Taking into account these considerations, our decision is that the balance of public interest is in withholding this information.

Section 40 – personal information

We consider that some information is exempt under section 40(2) and 40(3)(a)(i) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3) 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 emails being released contain minor redactions to omit the name and contact details of certain employees of Monitor, and the some private contact details of others who are named. The individuals concerned would have a reasonable expectation that these details would not be disclosed. The information redacted constitutes personal data and its release would be unfair and unlawful processing under the Data Protection Act 1998.

Review rights

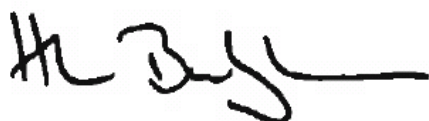
If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an internal review within 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.

Please note that this letter and the attached information will shortly be published on our website. This is because information disclosed in accordance with the Freedom of Information Act 2000 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 'H. Buckingham', with a long horizontal line extending to the right.

Helen Buckingham
Chief of Staff

From: [REDACTED] Parlybriefing
Sent: 21 September 2015 12:15
To: [REDACTED]
Cc: Parlybriefing
Subject: RE: urgent contribution to oral PQ - required by 1pm today

Hi [REDACTED]

I have been passed the request below from colleagues. Please can I ask in future you send any requests like this to Parlybriefing@monitor.gov.uk as myself or a colleague will coordinate Monitor's response form there.

Regarding the PQ below, it is yet to be confirmed when the Q1 report will be published but we should have a final decision on this in the next day or so. I would recommend for this PQ you refer to the most recent figures available in the Q4 results (See our website - <https://www.gov.uk/government/collections/nhs-foundation-trusts-quarterly-performance-reports>)

Please let me know if you have any questions.

[REDACTED]
[REDACTED] Parliamentary and Stakeholder Engagement [REDACTED]

Monitor

[REDACTED] www.GOV.UK/monitor
Wellington House, 133-155 Waterloo Road, London, SE1 8UG

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Our job is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit.**

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From: [REDACTED]
Sent: 06 October 2015 15:06
To: 'Briefing TDA (NHS TRUST DEVELOPMENT AUTHORITY)' [REDACTED]
Cc: [REDACTED]
Subject: RE: PQ - FT/Trust Deficits

Hi [REDACTED]

We are to publish our Q1 report this Friday (9th October).

Many thanks

[REDACTED]

[REDACTED] Parliamentary and Stakeholder Engagement [REDACTED]

Monitor

Direct Line [REDACTED] www.GOV.UK/monitor
Wellington House, 133-155 Waterloo Road, London, SE1 8UG

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From: [REDACTED]
Sent: 06 October 2015 11:48
To: Briefing TDA (NHS TRUST DEVELOPMENT AUTHORITY)
Cc: [REDACTED]
Subject: FW: PQ - FT/Trust Deficits

Please see email below – is the parly.hub@nhs.net address that I used below wrong?

In any case, please could you align a response with Monitor and provide by COP tomorrow?

Thanks
[REDACTED]



Department
of Health

[REDACTED]
Financial Control Branch, Group Reporting
Group Financial Management
Finance, Commercial and NHS Directorate
Department of Health, Quarry House, Quarry Hill, LS2 7UE
[REDACTED]

From: [REDACTED]
Sent: 06 October 2015 11:31
To: [REDACTED]
Parlybriefing (Parlybriefing@Monitor.gov.uk); parly.hub@nhs.net
Cc: [REDACTED]
Subject: PQ - FT/Trust Deficits

All

Please could you provide a response and appropriate background to the following PQ, received today -

Lord Hunt of Kings Heath | To ask Her Majesty's Government when both Monitor and the NHS Trust Development Authority will publish the financial performance data for the first quarter of 2015–16 for NHS foundation trusts and NHS trusts. HL2409

A full response is due by noon on the 8th October and therefore would appreciate it if you could provide a combined/agreed response by cop Weds 7th October, to allow for DH SCS clearance.

Many thanks
[REDACTED]



Department
of Health

[REDACTED]
Financial Control Branch, Group Reporting
Group Financial Management
Finance, Commercial and NHS Directorate
Department of Health, Quarry House, Quarry Hill, LS2 7UE
[REDACTED]

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From: [REDACTED]
Sent: 14 October 2015 10:32
To: [REDACTED] Parlybriefing
Cc: [REDACTED]
Subject: RE: PQ - re Q1 performance report

Hi [REDACTED]

[REDACTED] will be calling you in the next few minutes.

Thanks
[REDACTED]

[REDACTED] Parliamentary and Stakeholder Engagement [REDACTED]

Monitor

[REDACTED] www.GOV.UK/monitor

Wellington House, 133-155 Waterloo Road, London, SE1 8UG

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From: [REDACTED]
Sent: 14 October 2015 10:31
To: [REDACTED] Parlybriefing
Cc: [REDACTED]
Subject: RE: PQ - re Q1 performance report

Thanks but the draft response, as per my email will now be sent to our parly team unless you have significant issues that you let me know about in the next five minutes.

Sorry that this has all been so tight, but the response has to go to parly this morning, for clearance today.

Regards
[REDACTED]

From: [REDACTED]
Sent: 14 October 2015 09:41
To: [REDACTED] Parlybriefing
Cc: [REDACTED]
Subject: RE: PQ - re Q1 performance report

Hi [REDACTED]

My colleague [REDACTED] is dealing with it and will be responding to you soon.

Thanks

[REDACTED]
[REDACTED] Parliamentary and Stakeholder Engagement [REDACTED]

Monitor

Direct Line [REDACTED] www.GOV.UK/monitor
Wellington House, 133-155 Waterloo Road, London, SE1 8UG

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From: [REDACTED]
Sent: 14 October 2015 09:38
To: Parlybriefing
Cc: [REDACTED]
Subject: RE: PQ - re Q1 performance report

Sorry to chase but have you had chance to look at this? Really need a response in the next hour so to allow enough time to get Minister's clearance today for answer tomorrow.

From: [REDACTED]
Sent: 13 October 2015 18:42
To: [REDACTED]
Cc: [REDACTED]
Subject: PQ - re Q1 performance report

[REDACTED]
We have been allocated the following PQ -

Heidi Alexander | Lewisham East | To ask the Secretary of State for Health, when he was first informed of the findings of Monitor's report on the performance of the foundation trust sector for the three months ending 30 June 2015. 11474

[REDACTED]

An urgent response would be greatly appreciated. A draft needs to be cleared by Ministers for response on Thursday 15th October.

Regards



Department
of Health

[REDACTED]
Financial Control Branch, Group Reporting
Group Financial Management
Finance, Commercial and NHS Directorate
Department of Health, Quarry House, Quarry Hill, LS2 7UE
[REDACTED]

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From: [REDACTED] Parlybriefing
Sent: 14 October 2015 11:29
To: [REDACTED]
Cc: Parlybriefing; [REDACTED]
Subject: PQs on Q1 figures

Follow Up Flag: Follow up
Flag Status: Completed

Hi [REDACTED]

As previously discussed, can I request that we are sent your draft response for the PQs below, and the final draft for Heidi Alexander's, at the earliest opportunity? This will give me time to get feedback from the relevant people here.

Thanks,

[REDACTED]

Lord Hunt of Kings Heath | |To ask Her Majesty's Government what discussions took place between government officials or special advisers and Monitor over the publishing of Q1 financial figures for NHS Foundation Trusts prior to the Conservative Party Conference. HL2569

Lord Hunt of Kings Heath | |To ask Her Majesty's Government whether Monitor was instructed by officials to delay publishing Q1 financial figures for NHS Foundation Trusts ahead of the Conservative Party Conference, and if so, why. HL2570

Heidi Alexander | Lewisham East | To ask the Secretary of State for Health, when he was first informed of the findings of Monitor's report on the performance of the foundation trust sector for the three months ending 30 June 2015. 11474

From: [REDACTED]
Sent: 14 October 2015 10:37
To: Parlybriefing
Subject: PQs

Hi

Please find attached the Commons and Lords PQs for today. I have already sent you a PQ for info from Andrew Rosindell.

I have also highlighted in yellow a couple of Lords PQs from Lord Hunt about the Q1 financial report which DH will answer. As you know, [REDACTED] is currently dealing with another PQ about this.

Regards



Department
of Health

Department of Health, NHS Personalisation and Regulation Team
Room 239, Department of Health, 79 Whitehall, London SW1A 2NS

T: 0207 [REDACTED]

E: [REDACTED]@dh.gsi.gov.uk

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