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Dear

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

I refer to your email of 2 February 2016 in which you requested an internal review of Monitor's decision dated 25 February 2015 in relation to your FOI Act request dated 23 January 2015, in which you made the following request:

"I would like to see a copy of the minutes, agendas and any papers presented to or reference by the Provider Appraisal Executive at its last three meetings."

Your email of 2 February indicated that you wished to review the decision in so far as it related to papers on St George's NHS Foundation Trust, and that your view was that the given the failures identified in Monitor and the trust's handling of the FT application and approval, the public interest outweighs the concerns identified under sections 33 and 36 of the FOIA.

Decision

I have now conducted a review of that decision and decided that the original decision should be upheld. The papers withheld originally and within the scope of the review should continue to be withheld.

The papers to which your internal review relates were withheld on the basis of section 33 of the FOIA (prejudice to audit-related functions) and section 36 (prejudice to the free and frank provision of advice and exchange of views). In your request, I note that you do not challenge the conclusion that the prejudice set out in the decision letter would, or would be likely to occur. I have however considered the information in question and the arguments set out in the original decision. I am satisfied that —

(a) Disclosure of the information would be likely to prejudice the exercise of Monitor's functions in relation to the examination of the economy, efficiency and effectiveness

with which NHS foundation trusts ("FTs") perform their functions. In particular it would prejudice the relationship of trust and confidence Monitor has with FTs and may make trusts less willing to provide full and frank disclosure of information in connection with transactions or FT authorisation. Section 33 of the FOIA is therefore engaged.

(b) David Bennett, Monitor's chief executive at the time of the original decision, was of the opinion that, in relation to some of the information in question, disclosure would inhibit the free and frank exchange of views for the purposes of deliberation and the free and frank provision of advice. This was reasonable given that the information consisted of papers provided to Monitor's Provider Appraisal Executive for the purposes of determining whether to grant an FT authorisation, or records of the committees deliberations. I do not consider it necessary to review or obtain a further opinion on those matters. Section 36 of the FOIA is engaged.

Both exemptions are however subject to a public interest test: the information may be withheld only if the public interest in maintaining the exemptions outweighs the public interest in disclosure. The original decision was that in relation to both exemptions, the public interest balance lay in not disclosing the information.

In applying this test in relation to the papers in respect of which you have sought a review, I have considered the public interest factors in favour of disclosure as set out in the original decision letter. This includes the public interest in the work and decisions of Monitor's Provider Appraisal function, particularly as regards St George's NHS Foundation Trust. I have also considered the argument that given the failures identified in the handling of the FT application and approval, there is now a stronger public interest in disclosure.

I have however also considered the public interest factors against disclosure, including the strong public interest in –

- allowing Monitor to gather sensitive information in order to scrutinise effectively applications for FT authorisation, without concern that such information would have to be disclosed publicly;
- staff in Monitor being able to freely exchange information and advice, and engage in open and candid discussion, in order to perform effectively Monitor's regulatory functions; and
- ensuring that the integrity of Monitor's decision-making process was not prejudiced by disclosure which would inhibit the candour with which advice was provided or views exchanged.

In addition, I have taken into account the availability publicly of a substantial amount of information about the authorisation of the trust, the subsequent deterioration in its financial position, the reasons for the deterioration and the lessons to be learned. In particular, Monitor has published in full the report of the independent "lessons learned" review, and the trust has published the findings of the PWC forensic review and assessment. This published information provides a detailed explanation of the events in question and the reasons for the failures to which you refer in your email.

In the circumstances, I remain of the view that the public interest in disclosure is outweighed by the need to maintain the exemptions from disclosure.

Review rights

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Please note that this letter 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,

Toby Lambert

Director of Pricing

IN One