

16 February 2016

[REDACTED]

By email

[REDACTED]

Dear [REDACTED]

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

1. I refer to your email of 24 November 2015 in which you requested an internal review of Monitor's decision to redact pages 6 to 12 of the pdf document released on 23 November. The decision related to your FOI Act request dated 26 October 2015 in which you made the following request:

"Under the Freedom of Information Act, please send me all and any documents produced in the last 3 months concerning the position of Les Lawrence as chair of Heart of England Foundation Trust"

Original decision

2. In our response of 23 November 2015, we released a letter from Monitor to the chair of Health of England NHS Foundation Trust ("the Trust") dated 16 October 2015. We however redacted the annexes to the letter (pages 6 to 12 of the pdf document to which you refer).
3. Please note that although the redactions in the body of the letter of 16 October were made in relation to personal information withheld under the exemption in section 40 of the FOI Act (personal data), that was not the basis for the redaction of the annexes to the letter (pages 6 to 12 of the pdf document). As set out in the "Decision" section of our letter of 23 November, annexes 1, 2 and 3 were withheld under section 36 of the FOI Act. In particular, on the basis that disclosure of the annexes would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation. We went on to explain that we had conducted the balance of public interest test and we were content that the public interest favoured withholding the information. At the time of the decision, the final enforcement action taken in respect of the Trust had yet to be published

Outcome of the review

4. I have now conducted a review of that decision and decided that -

- a. The information in annexes 1 and 2, which set out the proposed enforcement action in relation to the Trust is now in the public domain.
 - b. I have decided that the information in annex 3 should now be disclosed.
5. Annexes 1 and 2 contained the proposed enforcement action. The details of the action taken has now been published. This consists of enforcement undertakings accepted by Monitor under section 106 of the Health and Social Act 2012 and requirements imposed under section 111(5) of that Act (to appoint an interim chair and interim chief executive). These can now be found on Monitor's webpages. See the links to the relevant documents under the "Regulatory action" section of the entry for the Trust on Monitor's NHS foundation trust directory, at the following address –

<https://www.gov.uk/government/groups/heart-of-england-nhs-foundation-trust>

Please note that on this webpage, the link to the notice of requirement to appoint interim chair and interim chief is described as "Enforcement Undertakings – 22 October 2015". The undertakings are accessed by the link entitled "Enforcement Undertakings – 27 October 2015".

6. I can confirm that the action taken was the same as the action proposed in the redacted annexes, with 2 minor changes to the enforcement undertakings –
- a. Paragraph 1.4 of the final undertakings included an additional commitment to adopt a set of key performance indicators to assessment performance of the short term financial improvement plan.
 - b. The external support to be commissioned under paragraph 1.7 of the undertaking has been extended to cover the short term plan, as well as the long term financial plan.

The section 111(5) requirements (to appoint Rt Hon Jacqui Smith as interim chair and Dame Julie Moore as interim chief executive) were imposed as proposed.

7. In relation to annex 3, this set out a proposed timeline for finalising Monitor's enforcement action. As the process has now completed and the enforcement action published, I have decided that the timeline, set out below, can be released –

Date	Action
Friday 16 October	Trust informed of proposed regulatory action
Monday 19 October	Monitor calls with key stakeholders at the Trust
By 8am Thurs 22 October	End of 5 day person in which the Trust can make representations to Monitor
Thursday 22 October	Monitor's Provider Regulation Executive meets to consider proposed enforcement action and Trust

representations. If committee agrees the action then Monitor will send the Trust the agreed s106 undertakings for signature by the Trust and the final s111 notice.

Review rights

8. 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.

Publication

9. 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



Mark Turner
Regional Director
Provider Regulation Directorate
Monitor