

26 July 2016

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

By email

Dear [REDACTED]

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

I refer to your email of 26 June 2016 in which you requested information under the FOI Act from NHS Improvement (NHSI). Since 1 April 2016, Monitor and the NHS Trust Development Authority (NHS TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and NHS TDA.

Your request

You made the following request:

With regard to information on the use of compromise agreements by Northumbria Healthcare NHS Foundation Trust which routinely featured secrecy and non-disparagement clauses, that was recently placed in the public domain, please can NHS Improvement advise me of any communication between the trust and Monitor or NHS Improvement (including direct contact with Jim Mackey the trust’s former Chief Executive) about media relations, public relations and or handling of enquiries regarding the FOI disclosure by the trust, and please disclose any correspondence or record of communication with Monitor and NHS Improvement relating to such Comms matters.

Decision

NHS Improvement holds some information in this respect.

NHS Improvement has decided to withhold all 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 in detail below.

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

NHS Improvement considers that all of the information it holds within the ambit of this request is exempt under section 36(2)(b)(ii) of the FOI Act. This provides that information may be withheld where, in the reasonable opinion of a qualified person, disclosure of the

information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.

In relation to information held by NHS Improvement, the Chief Executive (Jim Mackey) is the qualified person for the purposes of section 36(2) for both Monitor and the TDA. The Chief Executive's opinion is that disclosure of the information within the scope of the request would inhibit the free and frank exchange of views for the purposes of deliberation.

The email exchange identified is between the Communications teams at NHS Improvement and Northumbria Healthcare NHS Foundation Trust. In order to conduct its operational and policy business, NHSI relies on its Communications team to engage with other bodies. The Communications teams holds free and frank discussions about issues that arise, including the handling of media concerns. The Communications team is responsible for liaising on sensitive issues with providers and there is an expectation that discussions around media handling should remain confidential.

Section 36(2) - public interest test

NHS Improvement's view is that in this case the public interest in maintaining the exemption in section 36(2) of the FOI Act outweighs the public interest in disclosure.

In considering the balance, we have considered the public interest in transparency and openness in relation to NHS bodies' relationship with NHSI.

We have however also considered the public interest in allowing NHSI and other bodies to have free and frank discussions around media handling. We have considered the relationship between NHSI and the trust and consider that if communications of this type were made public, this would reduce the candour and frankness with which views are expressed. This would impact the quality of decision making by NHSI.

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 NHS Improvement of the issue or the decision. A senior member of NHS Improvement'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, 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, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to nhsi.foi@nhs.net.

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 black ink, appearing to read 'Jonathan', with a stylized flourish extending to the right.

Jonathan Brown

Senior Advisor