

06/05/2016

Wellington House  
133-155 Waterloo Road  
London SE1 8UGT: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

By email

Dear [REDACTED]

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

I refer to your email of 8 March in which you requested an internal review of Monitor's decision dated 9 November 2015 in relation to your FOI Act request dated 14 October 2015 in which you made a request for the following information:

*"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)."*

In our letter of 11 November 2015, we stated that we held the information that was requested but that we had decided to withhold some of it on the basis of the exemptions in section 36(2) and 40(2) of the FOI Act.

**Decision**

I have now conducted a review of that decision. I have carefully considered the information falling within the scope of the request and the reasons you have put forward for release of the withheld information and have decided to uphold the original decision. I have outlined the reasons for my decision below.

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

In order to conduct its regulatory and policy business, officials from Monitor and the Department of Health must be able to hold free and frank discussions about Monitor's regulatory and policy approach without fear of the content of those discussions being released to the public at large. This applies to the email correspondence falling within the scope of your request about the publication of NHS provider performance reports and an extract from email correspondence about how to respond to a Parliamentary Question. Disclosure of this information would inhibit the free and frank exchange of views between

Monitor (now NHS Improvement) and health sector stakeholders for the purposes of deliberation and would be likely to prejudice the effective conduct of public affairs.

I have considered the public interest in releasing this information. I recognise that there is a general public interest in transparency about the activity of public sector bodies, including how they interact with their sponsoring department and when they will publish important information. In this case, there is a public interest in decisions about the publication of important information about foundation trust performance. However, if such discussions were not able to take place confidentially, it is likely that the content of such exchanges would be severely inhibited in the future, which would adversely affect the quality of decision making.

On balance, I consider that the public interest lies with withholding the information identified as falling within the scope of the exemption under section 36(2) of the FOI Act. I am therefore agreeing with the decision in our letter of 11 November 2015.

#### Section 40 (personal information)

I have considered the application of the exemptions under section 40(2) and 40(3)(a)(i), and am satisfied that they have been properly applied to the information requested. As explained in the original decision letter, the correspondence requested contains the names and contact details of individuals. This information constitutes personal data in which those individuals would have a reasonable expectation would not be disclosed. As a result, the information released to you contained redactions of that information. To be clear, the correspondence that has been withheld is entirely exempt from disclosure under section 36 (as explained above) so it would not be possible to release it in a redacted form, as suggested in your letter.

#### Additional information

It may assist you to know that at its meeting on 22 March 2016, the NHS Improvement Board agreed to comply with the relevant parts of the Code of Practice on Official Statistics published by the UK Statistics Authority – steps are currently being taken to ensure compliance. The Code includes principles of impartiality and objectivity and meeting user needs. NHS Improvement will publish details of its revised approach to publication of sector performance data in the near future.

In addition, in accordance with its obligations under the FOI Act, Monitor (now part of NHS Improvement) has in place a publication scheme, which is available on our website and which is reviewed and revised as appropriate.

Additional information about the role of NHS Improvement and how that role is fulfilled is published on our website at <https://improvement.nhs.uk/>.

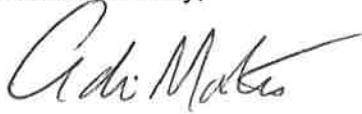
#### Review rights

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 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 cursive script, appearing to read "Adrian Masters".

**Adrian Masters**

Executive Director of Strategy

