

23 December 2015

[REDACTED]

By email [REDACTED]

Dear [REDACTED]

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

I refer to your email of **23 November 2015** in which you requested information under the FOI Act.

Your request

You made the following request:

"Please would Monitor please provide a list of the proposed [special severance payment] settlements by Foundation Trusts that it has accepted for onwards submission to the Treasury for approval, in each of these periods:

- 1) *financial year 2013-2014*
- 2) *financial year 2014-2015*
- 3) *the current financial year to date.*

Please provide the data by each of these three separate periods.

Please indicate the proposed amount to be paid for each settlement.

Please also indicate which of these cases included a whistleblowing element, as indicated by a claim to the employment tribunal on grounds of whistleblower detriment, and or disclosures made to employers or to Monitor, and or allegations of whistleblower reprisal."

Decision

Monitor holds some of the information you have requested. We hold a list of severance payment requests from NHS FTs for the current financial year 2015/2016 to date. We do not hold a list for the financial year 2014/2015 and the list we hold for 2013/2014 is incomplete. I have decided not to disclose the information held by Monitor for the reasons set out below:

Information accessible by other means – section 21 of the FOI Act

Details of paid severance payments are reported in individual FT annual accounts which are publicly available. For example, the 2014/2015 FT accounts are accessible at this webpage: <https://www.gov.uk/government/publications/nhs-foundation-trust-directory/nhs-foundation-trust-directory>.

I consider that the information is available to you by means other than under the FOI Act and that section 21 of the FOIA is therefore engaged. Section 21 is not subject to a public interest test. In due course, the 2015/2016 severance payment settlements will also be publicly reported by FTs individually.

Information provided in confidence – section 41 of the FOI Act

The information concerning requested severance settlements for the current financial year 2015/2016 is confidential to the requesting FTs and particular staff members. Section 41(1) provides that information is exempt information if:

- a) 'it was obtained by the public authority from any other person (including another public authority) and
- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

The test in section 41(1)(a) is met since the information was obtained by Monitor from third parties, FTs in this case. The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. For a breach of confidence to be actionable:

- (i) the information must have the necessary quality of confidence about it;
- (ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) the disclosure of the information must amount to an unauthorised use of the information to the detriment of the confider.

FTs have a reasonable expectation that the information contained in severance request forms will be kept confidential by Monitor and not disclosed to 3rd parties. Disclosure of the information you have requested would necessarily reveal confidential third party information concerning FTs and particular staff members. Further, the information is not trivial and is not currently readily available by other means.

Section 41 is an absolute exemption meaning that the public interest test does not apply. However, there is an inherent public interest test in determining whether the information has the necessary quality of confidence and should remain private. Notwithstanding a general public interest in fostering transparency in severance payment requests being made by FTs, I do not consider that the strong public interest in maintaining the confidentiality of sensitive information is outweighed by the public interest in disclosure at this point in

time, particularly in light of the fact that the final settlements will in due course be reported in publicly available financial accounts.

Personal Information – section 40(2) of the FOI Act

I consider that section 40(2) of the FOI Act, the exemption from disclosure of personal data, applies in respect of some of the information being sought.

In order for the section 40(2) exemption to be engaged, the information being requested must firstly constitute personal data as defined by the Data Protection Act 1998 (DPA). The DPA defines personal information as:

*“...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller...”*

Secondly, the release of the information pursuant to a FOIA request must amount to a contravention of any of the data protection principles.

Although the information requested does not expressly identify individual members of staff, I consider that some of the information could potentially lead to the individuals being identified when considered in conjunction with other available information. Accordingly, I consider that release of this information to you would amount to unfair and unlawful processing i.e. a contravention of the first data protection principle. Section 40(2) of FOIA is an absolute exemption meaning that it is not subject to a public interest test.

Cost of Compliance – section 12 of the FOI Act

With regards to part 4 of your request, I can confirm that Monitor does not hold this information in the form of a list as you requested. As my colleague Claire Upton explained to you in her email dated 23 November 2015, Monitor receives request forms from NHS foundation trusts for the approval of special severance payments. These forms are then submitted to HM Treasury for approval after Monitor has performed a preliminary check.

If Monitor were to extract and collate the whistleblowing information into the form of a list using the underlying request forms, we estimate that it would take circa 44 hours in total given the number of forms. Section 12 of the FOI Act provides for an exemption from disclosure where the cost of compliance exceeds the appropriate limit, which for Monitor is 18 hours. I have therefore decided not to disclose the information relating to part 4 of your request on the basis of section 12 of the FOI Act.

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.

Publication Notice

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 'W. Bessell'.

William Bessell
Sector Finance & Reporting Manager