

12 May 2016

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**By email**

Dear [REDACTED]

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

I refer to your email of 13 April 2016 in which you requested information under the FOI Act from Monitor. Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor.

**Your request**

You made the following request:

*“This is a Freedom of Information request relating to the contract negotiations between Cambridgeshire and Peterborough CCG and UnitingCare (including its two parent trusts, Cambridge University Hospitals NHS FT and Cambridgeshire and Peterborough NHS FT).*

*I would like to see copies of communications between Monitor and Cambridgeshire and Peterborough CCG, or between Monitor and Cambridge University Hospitals NHS FT or Cambridgeshire and Peterborough NHS FT, or between Monitor and NHS England, relating to the CCG’s older peoples’ service contract with UnitingCare/the trusts.*

*I would like copies of all communications relating to this contract and its negotiation that were sent or received during the period leading up to the commencement of the contract – i.e. up to and including April 2015 - involving the chairs or chief executives/accountable officers of the CCG and/or of the two trusts and/or of NHS England and/or of Monitor. This includes but is not limited to corporate or personal emails or text messages.”*

**Decision**

NHS Improvement holds information within the scope of your request. The information that NHS Improvement holds comprises emails between Baroness Joan Hanham (NHS Improvement’s former Chair) and Malcolm Grant, Chair of NHS England and David Bennett

(NHS Improvement's former Chief Executive) and Maureen Donnelly (Chair of Cambridgeshire and Peterborough CCG).

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)(b)(ii) of the FOI Act, as explained in detail below.

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

NHS Improvement has decided to withhold all of the information on the basis that it falls within section 36(2)(b)(ii) of the FOI Act (prejudice to the conduct of public affairs) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)).

The information being withheld consists of email communications between Baroness Joan Hanham (NHS Improvement's former Chair) and Malcolm Grant, Chair of NHS England and David Bennett (NHS Improvement's former Chief Executive) and Maureen Donnelly (Chair of Cambridgeshire and Peterborough CCG). Those emails relate to the approach to be taken in relation to the UCP contract and Monitor's transaction review. In order to carry out their functions, the officials of NHS Improvement, NHS England and CCGs must be able to hold free and frank discussions about regulatory and local health economy (LHE) decisions, without concern that the detail of those discussions will be disclosed inappropriately. If this material were published, it would be likely to restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. That would have an adverse impact on the ability of NHS Improvement, NHS England and CCGs to liaise effectively on regulatory and LHE decisions.

In addition, disclosure of exchanges between officials at NHS Improvement, NHS England and CCGs, which the parties would have expected to remain out of the public domain, would be likely to damage the relationship of trust and confidence between those organisations, as well as inhibit the free flow of information.

#### *Public interest test*

Monitor's view is that the public interest in maintaining the exemption outweighs the public interest in disclosure. In considering the balance, we have considered the public interest in transparency and openness in relation to decisions by public bodies, particularly decisions affecting the NHS. In particular, in the present case, there is a public interest in the public understanding the issues relating to the UCP contract.

We have also considered, however, the strong public interest in NHS Improvement, NHS England and CCGs being able to hold free and frank discussions about regulatory and LHE decisions, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring those organisations are able to have the open and confidential discussions necessary to ensure effective decision making.

Taking into account these considerations, our decision is that the balance of public interest is in withholding this information.

### **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](mailto: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 'H. Buckingham', with a long horizontal stroke extending to the right.

**Helen Buckingham**

Executive Director of Corporate Affairs