

28 July 2016

[REDACTED]

**By email**

[REDACTED]

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Dear [REDACTED]

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

I refer to your email of 11 May 2016 in which you requested information under the FOI Act from Monitor, and our first reply of 20 June 2016. I apologise for the further delay in replying to the second part of your request. Since 1 April 2016, Monitor and the NHS Trust Development Authority ("the NHS TDA") 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:

*"I would in particular, like the following reports:*

*- A piece of work done by Aldwych Partners on "evaluating the delivery of benefits from NHS mergers", which was commissioned last year.*

*- A piece of work commissioned by the Policy team from McKinsey on capital spending in the NHS. This was commissioned in 2013."*

We have answered the first part of your request in our letter of 20 June. This letter deals with the second part of your request – the McKinsey report on NHS capital spending.

### **Decision**

NHS Improvement holds the information that you have requested, but has decided to withhold that information, on the basis of the applicability of the exemption in section 36(2) of the FOI Act, as explained below

#### *Section 36 – prejudice to conduct of public affairs*

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

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

The work was commissioned by Monitor to inform and support a wider programme of work looking into the capital planning of the NHS, and involving a number of other sector stakeholders. The report included preliminary recommendations with a view to developing further lines of enquiry. Although it had been anticipated that the programme would lead to the publication of a report capital planning in the NHS, the work has been overtaken by subsequent developments in relation to NHS funding and other work looking at capital expenditure. The report has therefore not led to any specific policy decision or set of actions, and is not the subject of any on-going consideration or further work. If discussions and advice such as that in the report were generally made public, this would reduce the candour and frankness with which views were expressed or advice given by NHS Improvement staff, and external consultants engaged to provide advice in relation to policy matters. This would in reducing the quality of the NHS Improvement policy decisions informed by those views or that advice.

#### *Public interest*

NHS Improvement'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, in particular decisions affecting the NHS. In particular, we have considered the public interest in patients and the public understanding policy considerations in relation to NHS finance, including capital spending.

We have however also considered the strong public interest in allowing officials NHS Improvement, and external consultants engaged by NHS Improvement in relation to policy development, to have free and frank discussions about policy options and related matters, informed by open, honest, frank and detailed advice. There is a strong public interest in ensuring that NHS Improvement able to have the open and confidential discussions necessary to ensure the effective development of its policies in relation to the NHS. We have also taken into account that in this case:

- (a) the report in question was in draft form and has not led to any final policy decision or set of actions affecting the NHS or members of the public; and
- (b) the opinion of NHS Improvement's qualified person is that the prejudice would occur (i.e. it was more probable than not that the prejudice would occur).

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,

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**Catherine McDonald**  
Policy Director

