

30 October 2015

██████████

By email

██

Dear Mr ██████████

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

I refer to your email of 4 October 2015 in which you requested information under the FOI Act.

Your request

You made the following request:

Please release any records you have, including emails, relating to the presentation of the "Quarterly report on the performance of the NHS Foundation Trust sector" at the Monitor Board meeting on 30th Sept and the scheduling of this presentation within the meeting.

You also explained that you were not asking for the report or the paper presented to the Board. As you may be aware, those documents have been published and are available at –

<https://www.gov.uk/government/publications/nhs-foundation-trusts-quarterly-performance-report-quarter-1-201516>

Decision

Monitor holds the information that you have requested. Monitor has decided to withhold some of the records that it holds on the basis of the applicability of the exemptions in sections 21 and 36(2) of the FOI Act, as explained below.

Monitor has decided to release the documents attached to this letter, with redactions to exclude information on the basis of section 40 of the FOI Act, as explained below.

Section 21 – information accessible to the applicant by other means

Section 21(1) of the FOI Act provides that information is exempt if it is reasonably accessible to the applicant by other means. The relevant entries in the agenda and minutes of the

Board meeting of 30 September have been published on Monitor's webpages and are therefore reasonably accessible by you otherwise than under the Act and have therefore not been disclosed with this letter. You can find the agenda and minutes at:

- Agenda - <https://www.gov.uk/government/publications/monitor-board-papers-for-30-september-2015-meeting>
- Minutes - <https://www.gov.uk/government/publications/monitor-board-papers-for-28-october-2015-meeting>

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

Monitor has decided to withhold some information on the basis that it falls within section 36(2)(b)(ii) of the FOI Act (prejudice to public affairs – free and frank exchange of views) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as Monitor's qualified person (David Bennett, Chief Executive) is of the opinion that disclosure of this information would inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)). The information being withheld relates to internal discussions within Monitor about the presentation of the quarterly report and related Board paper, and its subsequent publication. In order to conduct its regulatory and policy business, Monitor's board members and staff must be able to hold free and frank discussions about regulatory matters, including the publication of reports such as the quarterly report on FT performance, without concern that the detail of those discussions will be disclosed inappropriately. Frank and open discussion about such matters is a necessary part of Monitor's governance, to enable it to make appropriate decisions. If the information was published, it would 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 Monitor to make effective decisions. It would also be likely to inhibit the open and honest exploration of possible options for publication.

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 patients and the public understanding the reasons for decisions about the timing of the consideration and publication of an important report relating to the performance of a sector of the NHS.

We have however also considered the strong public interest in Monitor staff being able to hold free and frank discussions about regulatory matters, including the publication of reports such as the quarterly report, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring Monitor staff are able to have the open and confidential discussions necessary to ensure effective decision making. We have also taken into account that, in relation to the risk that disclosure would inhibit free

and frank exchange of views, the opinion of Monitor's qualified person was 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.

Section 40 – personal information

We consider that some information is exempt under section 40(2) and 40(3)(a)(i) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3) is satisfied, namely that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully). This is an absolute exemption and consideration of the public interest test is not required. The emails being released contains minor redactions to omit the name and contact details of junior employees of Monitor, and the some private contact details of others who are named. The individuals concerned would have a reasonable expectation that these details would not be disclosed. The information redacted constitutes personal data and its release would be unfair and unlawful processing under the Data Protection Act 1998.

Review rights

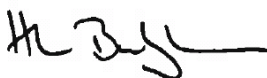
If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an internal review within 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.

Please note that this letter and the attached information will shortly be published on our website. This is because information disclosed in accordance with the Freedom of Information Act 2000 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,



Helen Buckingham
Chief of Staff