

16 January 2017

**By email**

[REDACTED]  
[REDACTED]

Dear [REDACTED]

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

I refer to your email of 14 December 2016 in which you requested information from NHS Improvement under the FOI Act. Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as an integrated organisation known as NHS Improvement. We have treated your request as relating to vacancy figures in relation to both NHS trusts and NHS foundation trusts and for the purposes of this decision, NHS Improvement means Monitor and the TDA.

**Your request**

You made the following request on 14 December 2016:

*"Please provide:*

- 1. All of the most recently available vacancy figures for NHS trusts broken down by staff group and trust. If possible please also provide a vacancy rate as a percentage.  
\*If this is available by staff group: ie. nurses/doctors AND as a total - ie. all staff or all clinical staff - please provide both.*
- 2. The most recently available national vacancy figure, as a total across all staff or broken down by staff group. (If both are held please provide both, if only one figure is held please provide whichever is held). If possible please also provide a vacancy rate as a percentage.*
- 3. All other most recent analysis on staff shortages within NHS Trusts held by NHSI."*

**Decision**

NHS Improvement's decision is as follows:

**1. Trust specific information**

NHS Improvement holds some of the information requested. We collect information from NHS trusts and NHS foundation trusts relating to staff vacancies on a monthly basis. The information is provided on a voluntary basis. We hold vacancy data as an overall percentage for NHS trusts and NHS foundation trusts. In relation to NHS trusts, we also hold vacancy percentages for different staff groups.

NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in sections 21, 31 and 33 of the FOI Act, as explained in detail below.

### **Section 21 (information accessible to 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.

In some cases NHS trusts and NHS foundation trusts have provided vacancy data in their public Board papers, which are available on their websites.

### **Section 31 (law enforcement)**

NHS Improvement considers that the withheld information is exempt from disclosure under section 31(1)(g) of the FOI Act which provides that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2).

NHS Improvement considers that section 31(2)(c) is engaged and that disclosure of the information in question would be likely to prejudice the exercise by Monitor and TDA of their functions for the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of an enactment.

The conditions of Monitor's provider licence enable Monitor to regulate the economy, efficiency and effectiveness of NHS foundation trusts under Chapter 3 of Part 3 of the Health and Social Care Act 2012. Monitor will take into account vacancy rates as a measure of governance and in monitoring NHS foundation trusts' compliance with the licence.

Section 5 of The National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016 provides that the TDA must exercise its functions with the objective of ensuring that English NHS trusts are able to comply with their duty under section 26 of the NHS Act 2006. Section 26 sets out the general duty of NHS trusts to exercise their functions efficiently, economically and effectively – by, for example, establishing and maintaining best practice corporate governance arrangements and financial management standards, and effectively implementing systems and processes.

In order for NHS Improvement to effectively regulate NHS trusts/NHS foundation trusts we rely on their willingness to share information with us voluntarily. In turn, trusts have a reasonable expectation that we will treat sensitive information that they submit to us as confidential. Disclosing the information would be likely to prejudice our ability to consider any potential concerns about trusts' performance. Releasing the information would give trusts reason to believe that we may disclose sensitive information prematurely (for example before we have determined whether or not it is appropriate to take regulatory action) and may reduce the amount and quality of information of information that they are prepared to share with us voluntarily in future. This would have a detrimental impact on the open relationship of trust that we have built with the sector.

### **Section 33 (audit functions)**

Section 33(1)(b) and 33(2) of the FOI Act provide that information may be exempt from disclosure where disclosure would, or would be likely to, prejudice the exercise of any public authority's functions in relation to the examination of economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

NHS Improvement is of the view that disclosure of the trust level vacancy information it holds would be likely to prejudice the exercise of its functions in relation to the examination of economy, efficiency and effectiveness with which other public authorities (NHS trusts and NHS foundation trusts in this case) use their resources in discharging their functions.

NHS Improvement relies on the full and frank provision of information from NHS trusts and NHS foundation trusts in order to carry out its functions effectively. We operate a trust-based approach to our relationships with NHS trusts and NHS foundation trusts. Accordingly we would not wish to prejudice that relationship of trust and confidence. There is potential prejudice to that relationship, and accordingly to the ability of NHS Improvement to regulate NHS trusts and NHS foundation trusts, if sensitive information which those trusts provide to NHS Improvement is disclosed. In consequence there is a potential detriment to the system of regulation of NHS trusts and NHS foundation trusts. For these reasons, we consider that disclosure of the vacancy figures is exempt under section 33.

#### *Public interest test*

Section 31 and 33 of the FOI Act are qualified exemptions and therefore require that a public interest test be carried out to determine whether the exemption should be maintained. The test is whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We consider that there may be a public interest in disclosing trust specific vacancy rates given the public interest in the effective delivery of health care. However, we consider that there is a stronger public interest in giving NHS Improvement and trusts a safe space to discuss the level of staff vacancies and to consider how to address any issues identified.

## **2. National figures**

NHS Improvement does not hold national vacancy figures. All our data is at trust level with a national proxy measure derived from the composite trust rates.

## **3. All other analysis**

It is not clear what information is being requested here. NHS Improvement has not specifically produced a report on workforce supply issues.

### **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 'Fabian Henderson', with a large, stylized initial 'FH' to the left.

**Fabian Henderson**  
Senior Workforce Policy Lead