

14 October 2016

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By email [REDACTED]

Dear [REDACTED]

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

I refer to your emails of **29 September 2016** in which you requested information under the FOI Act from Monitor and NHS Improvement. 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 requests:

*“Please can you provide a copy of all correspondence, including letters, emails and email chains, sent from 31 March 2015 to 28 September 2016 between Monitor, and subsequently NHS Improvement, and management and senior staff at South East Coast Ambulance Service NHS Foundation Trust?”*

and

*“Please can you provide a copy of all correspondence, including letters, emails and email chains, sent from 31 March 2015 to 28 September 2016 between Monitor, and subsequently NHS Improvement, and the Care Quality Commission about South East Coast Ambulance Service NHS Foundation Trust?”*

We have dealt with your requests together because they relate to similar information (i.e. Monitor/NHS Improvement correspondence about South East Coast Ambulance Service NHS Foundation Trust (“the Trust”) between 31 March 2015 and 28 September 2016).

### **Decision**

We have not been able to progress your request, because to do so would exceed the cost limit under section 12 of the FOI Act, as explained in detail below.

### *Cost limit under section 12(1) of the FOI Act*

Under section 12(1) of the FOI Act, an organisation can refuse a request if the cost of complying with it would exceed the relevant cost limit. For NHS Improvement, this limit is £450 or 18 hours of staff time to locate, retrieve and extract the requested information.

In NHS Improvement's view, compliance with your request will exceed this limit. It would require several members of staff a number of hours to locate, retrieve and extract a large amount of information covering a period of 18 months. This is likely to exceed the section 12 cost limit. This is because:

- In October 2015 and March 2016, we took enforcement action against the Trust including agreeing a set of actions to address governance failings relating to the "Red3 project", which changed standard operating procedures for calls made to 111. We have been closely monitoring the Trust's performance against these requirements during the period of your request, which has generated a large volume of correspondence.
- In September 2016, we agreed to place the Trust into special measures further to the findings of the CQC's inspection in May 2016. This generated a large amount of correspondence, including regarding additional support for the Trust to help it address the issues identified.
- There have been a significant number of individuals, from a number of different teams within NHS Improvement, involved in supporting the Trust to improve its performance within the timeframe of your request. We would therefore need to search the records of a large number of individuals to identify the information requested.

In addition to the application of section 12(1), it is likely that the information you have requested would be exempt under section 31 of the FOI Act.

### *Section 31(1)(g) exemption under the FOI Act*

Pursuant to section 31(1)(g) of the FOI Act, NHS Improvement does not need to provide information if the disclosure of that information would, or would be likely to, prejudice the exercise by NHS Improvement of its functions for the purpose of ascertaining whether:

- any person has failed to comply with the law; or
- circumstances exist or may arise which would justify regulatory action in pursuance of any enactment.

The disclosure of communications between NHS Improvement and senior staff at South East Coast Ambulance Service NHS Foundation Trust ("the Trust") and the CQC may be prejudicial to NHS Improvement's exercise of its regulatory functions. This is because the communications contain open and frank expressions of opinion about whether the Trust has complied with the regulatory requirements and the actions needed to address any breaches, during a time when the Trust became subject to ongoing enforcement action. Releasing this type of information may deter providers and other stakeholders from co-operating with NHS Improvement and may inhibit future communications with other foundation trusts and stakeholders about the appropriate approach to take in individual cases. This may prejudice the exercise of our regulatory functions and the information may therefore be exempt from release under the FOI Act.

### *Next steps*

Given NHS Improvement's indication above regarding the volume of documentation that would need to be reviewed, NHS Improvement provides the following indications to assist you to make a request that would be less likely to exceed the cost limit under section 12(1) of the FOI Act:

- consider narrowing the scope of your request by limiting the type of correspondence you are seeking and limiting the timescale of the search;
- consider narrowing the individuals captured by your request, to limit the breadth of the search to particular teams or individuals; and,
- consider the types of information that may be excluded under section 31 of the FOI Act.

Please note that we publish our responses to requests under the FOI Act on our website at the following webpage: [here](#). In addition, we publish a large amount of information about foundation trust performance, including:

- our assessment of the risk of each foundation trust's on-compliance with the continuity of service and governance conditions of their licence;
- whether NHS Improvement has opened an investigation into a foundation trust's non-compliance with its licence; and
- any enforcement action taken by NHS Improvement against each foundation trust for non-compliance with its licence.

The information about the Trust can be accessed via the following links:

- Foundation trust directory, including ratings: [click here](#)
- Enforcement action taken against the Trust: [click here](#)

In addition, we recently issued a press release about our decision to place the Trust into special measures, which is available on our website: [click here](#).

The Information Commissioner's Office [guidance](#) regarding FOI requests may assist you in resubmitting your request.

The deadline for response from NHS Improvement in relation to your request will be twenty days from the date of the resubmitted request. We will, of course, need to consider whether information requested can properly be provided in response to any such requests within the terms of the FOI Act.

Please note that NHS foundation trusts are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms 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 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.

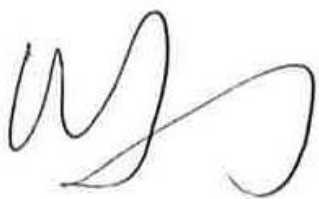
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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 be 'V Keilthy', written in a cursive style.

**Victoria Keilthy**

Head of Delivery and Improvement, South West