

1 July 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 **3 June 2016** in which you requested information under the FOI Act from 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 request:

*"Please let me have details of payments made for the services of Mark Davies, who I understand was Monitor's interim improvement director between January 2014 and August 2015. The details should include -*

- the total paid*
- the party making the payments, whether Monitor or another NHS body*
- the party to which payments were made, whether Mr Davies or another agency or service company*
- the basis on which the payments were arrived at, for example any daily rate on which they were calculated"*

**Decision**

NHS Improvement holds the information that you have requested and has decided to withhold some of this information under sections 40 and 43 of the FOI Act, as explained in detail below.

Mr Davies was appointed as Improvement Director at the following trusts during the period January 2014 to August 2015, as follows:

- Colchester Hospital University NHS Foundation Trust, January 2014 - August 2015
- Medway NHS Foundation Trust, August 2014 – August 2015
- Heatherwood and Wexham Park Hospitals NHS Foundation Trust, February 2014 – October 2014

In relation to the first part of your request, [REDACTED]

[REDACTED] in line with our responsibilities under the Data Protection 1998 we do not publish the individual remuneration of members of staff below the level of executive director. This is because salary information relates to people's personal financial circumstances and disclosure could have a detrimental impact on them.

However, we acknowledge that there is a legitimate public interest in knowing how public money is apportioned across an organisation and that there is a particular public interest in the cost incurred for the roles carried out by Mr Davies given the seriousness of the issues at the providers concerned. Furthermore, Mr Davies has now consented in this particular case to the release of this information. We are therefore releasing the total figure paid for the services of Mr Davies during the time period January 2014 to August 2015 in his role as Improvement Director at the three above named trusts, which is £519,240 including VAT. This figure includes agency fees charged for administering payments and timesheets etc.

In relation to the second and third parts of your request, we have decided to release this information. The services of Mr Davies were paid for by Monitor to the recruitment agency Michael Page, complying in full with Department of Health guidelines on off-payroll payments. The arrangements were approved by the Department of Health.

As far as the final part of your request is concerned, we can confirm that the payment amounts were determined on the basis of daily rates agreed for provision of those services. The rates were agreed following a process of negotiation; our requirements, in terms of when the services were needed at each trust, were agreed on an on-going basis to meet the individual requirements of each of the trusts concerned. We have decided not to release details of the applicable daily rates for the reasons outlined below.

#### Section 40 – personal data

I consider that revealing precise details of the daily rates negotiated for provision of Mr Davies' services as Improvement Director is exempt from disclosure under sections 40(2) and 40(3)(a) of the FOI Act on the grounds that it contains personal data and that the first condition under section 40(3)(a) is satisfied, namely that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully) and its release is likely to cause damage or distress. This is an absolute exemption and consideration of the public interest test is not required.

As outlined above [REDACTED]

[REDACTED] we do not publish details of the individual remuneration of our staff below executive director level. Mr Davies therefore has a reasonable expectation that this detailed information about his individual financial circumstances would not be released. To release this information is likely to cause damage to any on-going and future negotiations by Mr Davies and he is likely to suffer distress as a result of its release.

NHS Improvement accepts that there is a legitimate public interest in knowing how public money is spent, which includes information about the cost of special measures, including the amount expended on improvement directors. In recognition of this and the need for transparency of public authorities, we have provided the total amount paid for Mr Davies' services and (in conjunction with the Care Quality Commission) we published a report in August 2014 about action taken under the special measures regime, including the costs of action taken. This report is available on our website via the following link: <https://www.gov.uk/government/publications/nhs-trusts-and-foundation-trusts-in-special-measures-1-year-on>. However, we do not consider that this legitimate public interest is met by disclosing information that would allow the public to ascertain the daily remuneration of individual improvement directors.

### Section 43 – commercial interests

I consider that the daily remuneration of this appointment is exempt from disclosure under section 43(2) of the FOI Act on the basis that it would, or would be likely to, prejudice the commercial interests of any person. This is because release of this information is likely to be prejudicial to NHS Improvement's and Mr Davies' commercial interests.

The role of improvement director was introduced as part of the new special measures regime in the autumn of 2013. Improvement directors were recruited on an individual basis as and when the need arose. The improvement director roles are different for each provider and depend upon the specific issues faced by it. As a result, each role requires different types of experience and levels of operation within the sector and the rates applicable for each role are individually negotiated. If we were to release the daily rates agreed for the services of Mr Davies, individuals seeking to negotiate contracts with NHS Improvement for an improvement director position or other appointments could use the information to strengthen their own bargaining position when negotiating for, or providing services to, NHS Improvement. Also, it is likely that its release may prejudice the interests of Mr Davies in any on-going or future commercial negotiations.

### *Public interest test*

The public interest in accountability and transparency by making access to the information available has been weighed against the detrimental impact that is likely to ensure if disclosure is permitted.

I am content that the information above, detailing the total sum paid to Mr Davies, satisfies the public interest in transparency. This is in addition to the information NHS Improvement proactively publishes on the special measures programme.

### **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.

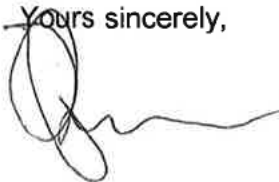
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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 'Phil Groves', written over the closing text.

**Phil Groves**  
Media Relations Director