

6 March 2017

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By email

[REDACTED]

Dear [REDACTED]

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

I refer to your email of **7 February 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as an integrated organisation known as NHS Improvement.

Your request

You made the following request:

“Please can you provide a copy of the completed investigation into financial governance failings at Gloucestershire Hospitals NHS Foundation Trust in 2016, which is referenced here: <https://improvement.nhs.uk/news-alerts/financial-special-measures-promise-significant-savings-nhs/>

Similar investigation reports have previously been published, for example: http://www.rbuht.nhs.uk/About%20Us/Documents/Corporate_governance_review.pdf

It appears this report was carried out or commissioned by NHSI, so it would be for you to release, rather than for the trust.

If any part of the report cannot be released, please redact this section and send the rest of the report.

Please also send any other reports into financial governance failings at the trust which have been completed since the start of 2016.”

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions set out in sections 31 and 41 of the Freedom of Information Act 2000, as explained in detail below. We have, however, provided hyperlinks to further information relating to the financial governance failings in case it is of assistance to you.

Section 31- law enforcement

NHS Improvement considers that the information requested is exempt from disclosure under section 31(1)(g) of the Freedom of Information Act 2000. This provides that information is exempt if its disclosure would, or is likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2). Those purposes include ascertaining whether the circumstances justify regulatory action in pursuance of any enactment.

The investigation was opened in order to address concerns about financial governance at the Gloucestershire Hospitals NHS Foundation Trust (the trust). In undertaking investigations with a view to determining whether further regulatory action may be necessary, NHS Improvement relies upon the relationships it builds with providers. In particular, it relies upon open and candid relationships in order to obtain information with a view to completing investigations quickly and efficiently. In this case, information was provided in the expectation that it was provided in confidence. In our view disclosure of information provided by the trust, and our consideration of the information provided, would undermine our relationship with the trust and its willingness to engage with us. We also consider that the public disclosure of confidential information would be likely to prejudice the willingness of other providers to work with us voluntarily in other cases. For these reasons I consider that the information requested falls within the scope of this exemption.

Public interest test

The exemption set out in section 31 of the FOI Act is subject to a public interest test. The public interest in accountability and transparency, which favours disclosure of the information that has been withheld, has been weighed against the detrimental impact that disclosure would have. NHS Improvement accepts that there is a public interest in the transparency of decision making and in the efficiency and effectiveness of both the providers it regulates and in the conduct of NHS Improvement itself. For this reason, we do make our findings public and we publish the details of any formal regulatory action resulting from an investigation.

In this case the trust published information relating to an external review of its financial governance on its website: see the [board paper from 20 September 2016](#). NHS Improvement has also published details of the basis for taking enforcement action and the action taken: see the [enforcement undertakings](#) dated 6 December 2016. In that context I consider that the public interest in accountability and transparency has been sufficiently addressed in the material that has already been made publically available.

Taking these matters into account I have therefore concluded that, on balance, the public interest in this case is best served by withholding the information that has been requested.

Section 41- information provided in confidence

Under section 41 of the FOI Act information is exempt information if it was obtained by a public authority from any person (including another public authority) and its disclosure would constitute a breach of confidence actionable by that or any other person.

In this case the trust provided NHS Improvement with some third party information which was subject to a duty of confidence. We consider that the author (and the trust) had a reasonable expectation that the content would remain private and only be used by NHS Improvement for specific and limited purposes relating to our regulatory functions. The information was not trivial, not readily available by other means and provided in confidence, which created an obligation of confidence.

Section 41 is an absolute exemption and does not require the application of a public interest test under section 2(2) of the FOI Act. However, in considering whether a confidence should be upheld, a court will have regard to whether the public interest lies in favour of disclosure. For the reasons set out above, we do not consider that there is a strong public interest in disregarding the duty of confidence in this case.

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.

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,

Tom Edgell

Tom Edgell

Head of Delivery and Improvement (South Central)