

7 January 2016

[REDACTED]  
[REDACTED]

**By email**

[REDACTED]

Dear [REDACTED]

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

I refer to your email of 15 December 2015 in which you requested information under the FOI Act.

**Your request**

You made the following request:

*“Please can you provide the following information under FOI laws:*

*Details of all requests to Monitor/TDA for a Local Price Modification, such as that agreed this year for University Hospitals of Morecambe Bay. Please provide details of all requests since 2012-13 until December 15, 2015.*

*Please include the following:*

- a) Name of the trust requesting the LPM*
- b) The predicted overall annual uplift (in overall trust income)*
- c) Any reasons for refusal.”*

We understand this to be a request for information in relation to local modification agreements and local modification applications received by Monitor in the period that you reference.

**Decision**

Monitor holds the information requested at paragraph (a) of your request: the names of these trusts are set out below.

Monitor does not hold any information in relation to paragraph (b) of your request.

In relation to paragraph (c) of your request, Monitor holds this information but I consider that it is exempt information under section 41 of the FOI Act (information provided in confidence). Further details are provided below.

### **Names of the Trust concerned**

During the period 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015 Monitor received proposed local modifications from the following::

Derby Hospitals NHS Foundation Trust

Oxford University Hospitals NHS Trust (now Oxford University Hospitals NHS Foundation Trust)

North Bristol NHS Trust

North Cumbria NHS Trust

Royal Marsden NHS Foundation Trust

Royal Brompton and Harefield NHS Foundation Trust

Weston Area NHS Trust

University Hospitals Morecambe Bay NHS Foundation Trust

Between 1<sup>st</sup> April 2015 and 15 December 2015 Monitor received proposed local modifications from the following:

Lewisham and Greenwich NHS Trust

North Cumbria NHS Trust

Plymouth Hospitals NHS Trust

United Lincolnshire Hospitals NHS Trust

University Hospitals Morecambe Bay NHS Foundation Trust

University Hospitals of the North Midlands NHS Trust

Weston Area NHS Trust

Worcester Acute Hospitals NHS Trust

### **(B) Predicted Overall Annual Uplift**

Where Monitor approves or grants a local modification the effect is to modify the national prices published in the national tariff for the services in question. Monitor's method for assessing a local modification does not include assessing overall annual uplifts in trust income. The income that a provider receives will principally be determined by the activity that is commissioned by NHS commissioners.

For information, Monitor's method for assessing local modifications is set out in the *National Tariff Payment System*, which was published in December 2013. See:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300547/2014-15\\_National\\_Tariff\\_Payment\\_System\\_-Revised\\_26\\_Feb\\_14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300547/2014-15_National_Tariff_Payment_System_-Revised_26_Feb_14.pdf)

### **(C) Any Reasons for Refusal**

Whilst Monitor holds this information, I consider that it is exempt information under section 41 of the FOI Act for the reasons set out below:

#### **Reasons for decision**

##### **Section 41 –information provided in confidence**

- (a) Under section 41(1) of the FOI Act information is exempt information if-It was obtained by a public authority from any other person (including another public authority), and
- (b) The disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The test in section 41(1)(a) is met as the information was obtained by Monitor from a number of NHS providers.

The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. This means:

- (i) The information must have the necessary quality of confidence about it
- (ii) The information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) Disclosure must amount to an unauthorised use of the information to the detriment of the confider.

In accordance with sections 124 and 125 of the Health and Social Care Act 2012, Monitor decides whether to approve an agreement or grant an application by applying the relevant method: for further details see the hyperlink above.

To comply with its method, applicants must provide Monitor with financial information relating to the services in respect of which a modification to the national price is being sought. That information was provided by the trusts in confidence.

In accordance with sections 124(7) and 125(7) of the 2012 Act Monitor must publish a notice where an agreement is approved or an application is granted. Since the 1<sup>st</sup> April 2014, Monitor has granted an application for six local modifications from University Hospitals Morecambe Bay Foundation Trust. Monitor's Notice of Decision can be accessed at: <https://www.gov.uk/government/publications/local-modifications>. However, there is no such obligation where an agreement or an application is rejected. In each case the reasons for rejection relate directly to information that was provided in confidence. In the context of the statutory framework and having considered the reasons for refusal, I therefore consider that the information has the necessary quality of confidence and was imparted in circumstances where there was an expectation that this obligation of confidence would be respected.

Section 41 is an absolute exemption and the application of the public interest test pursuant to section 2(2) of the FOI Act is not required. However, in considering whether, in an action for breach of confidence, a confidence should be upheld, a court will have regard to whether the public interest nonetheless favours disclosure. In this case I consider that there is a strong public interest in upholding the duty of confidence owed to the providers of the information. Whilst there is also a public interest in the transparency of public affairs, and acknowledging that in this case Monitor is exercising public functions at public expense, it is my view that the public interest in this case is better served by withholding this information.

### **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](mailto:foi@monitor.gov.uk).

Yours sincerely,

A handwritten signature in cursive script that reads "Michael J. Davies".

**Michael Davies**

Tariff Case Management Compliance Lead, Pricing, Monitor