

27 November 2015

[REDACTED]
[REDACTED]

By email

[REDACTED]

Monitor

Making the health sector
Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: enquiries@monitor.gov.uk
W: www.monitor.gov.uk

Dear [REDACTED]

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

I refer to your email of 4 November 2015 in which you requested an internal review of Monitor’s decision dated 3 November 2015. That decision was in response to your earlier request for information under the FOI Act (8 October 2015).

Your original request

You made the following request:

“Under the Freedom of Information Act, please send me copies of any letters or emails sent to by Monitor to external organisations or people in the past three months that explicitly refer to the contract tendered by CCGs in Birmingham for mental health services for people aged 0-25.”

We understood this to be a request for letters and emails sent by Monitor to external organisations or people in the period 8 June to 8 October 2015.

The Original Decision

Monitor’s original decision was set out in its letter of 3 November 2015. In summary, Monitor neither confirmed nor denied that it held any information falling within the description specified in your request. It followed that Monitor did not disclose any information in relation to your request.

Request for Internal Review

In your email of 4 November 2015 you stated:

“I’d like to appeal this please, as I don’t think you’ve used the exemption correctly.

You state: “Pursuant to section 31(3) of the FOI Act, the duty on a public authority to confirm or deny that it holds information of the description specified in a request does not arise if, or

to the extent that, compliance with section 1(1)(a) of the FOI Act would, or would be likely to, prejudice any of the matters mentioned in section 31(3) of the FOI Act.”

That’s a completely circular piece of reasoning, isn’t it? Are you saying that under sec 31(3), you can’t disclose information that would prejudice any matters relating to the part of the act relating to you not disclosing information?

This claimed exemption also doesn’t exist in law.

Here’s what the FOI Act says: “31.— (3) The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would or would be likely to, prejudice any of the matters mentioned in subsection (1).

So there’s nothing in there about “matters mentioned in section 31(3) of the FOI Act”.

Please reconsider, and disclose the information.”

Internal Review: Decision

Having reviewed your request and undertaken a full review of the issues I have decided to maintain the original decision. The reasons are the same as those set out in full in our letter of 3 November 2015. There is, however, a typographical error in that letter which appears to have caused some confusion. The reference to section 31(3) of FOIA in the penultimate paragraph on page 1, which you highlight in your subsequent email, should be a reference to section 31(1) of that Act. I regret any confusion that this has caused.

Review rights

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Pigott', with a stylized flourish at the end.

John Pigott
Competition Inquiries Director