

13 June 2016

Wellington House  
133-155 Waterloo Road  
London SE1 8UG

T: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

██████████  
**By email**  
██

Dear ██████████

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

I refer to your email of 16 May 2016 in which you requested an internal review of NHS Improvement’s decision dated 13 May 2016 in relation to your FOI Act request dated 26 April 2016 in which you made the following request:

*“Please disclose any recorded information you hold in relation to any investigations into County Durham and Darlington Foundation Trust since January 2014.”*

**Decision**

NHS Improvement holds the information that you have requested and decided to withhold it on the basis of the applicability of the exemption in section 31 FOI Act (prejudice to law enforcement).

I have conducted a review of that decision and I have decided to uphold it for the reasons given. In particular, County Durham and Darlington NHS Foundation Trust (“the Trust”) remains under investigation by NHS Improvement and we have yet to determine what regulatory approach, if any, will be taken. I also consider that the exemption under section 41 of the FOI Act (information provided in confidence) applies as explained in detail below.

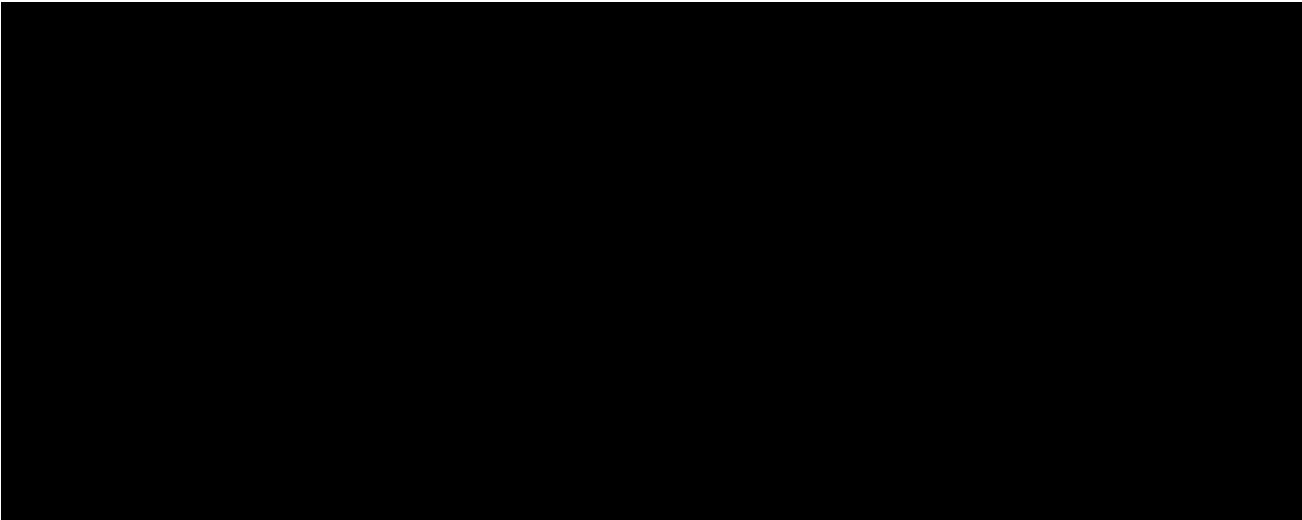
*Section 41 – Information provided in confidence*

Under section 41(1), information is exempt if it was obtained by NHS Improvement from another person and if disclosure of the information by NHS Improvement to the public would constitute a breach of confidence actionable by that other person. A breach of confidence will be actionable if a legal person is able to bring an action for the breach of confidence to court and the action is likely to succeed.

Some of the information that you have requested was confidentially provided to NHS Improvement by the Trust in response to the ongoing investigation that NHS Improvement

launched in December 2015. Compliance with NHS Improvement's regulatory processes by the Trust and other trusts, is crucial to our work. The reasonable expectation of trusts in providing confidential information is that it will remain private and will be used by NHS Improvement for the specific and limited purpose of regulating trusts. The information is not trivial and not readily available by other means and was imparted in circumstances which created an obligation of confidence.

Section 41 is an absolute exemption, so does not require consideration of the public interest test. However, when determining whether an action for breach of confidence would be likely to succeed it is necessary to consider whether the public interest in favour of disclosure overrides the public interest in maintaining the confidence. In this case, I consider that the strong public interest in keeping confidential information confidential should be maintained.



### **Review rights**

If you are not content with the outcome of the 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.

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,

Handwritten signature of Paul Chandler in blue ink.

**Paul Chandler**  
Regional Director - North