

19 May 2016

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E: nhsi.enquiries@nhs.net
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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 18 April 2016 in which you requested information under the FOI Act from NHS Improvement.

Since 1 April 2016, Monitor and the NHS Trust Development Authority (the 'TDA') have been operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

Your request

Your original request to NHS Improvement was:

"On 18th April 2-16, an email with the subject "Junior Doctor Return" was sent by Alun Williams (Information Manager) to NHS Trusts requesting information about issues relating to junior doctor contract implementation.

Please release all the responses to this email that were received on or before 20th April 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 exemption in section 36(2) of the FOI Act as explained in detail below.

Section 36(2) – prejudice to the conduct of public affairs

NHS Improvement considers that all of the information requested is exempt under section 36(2)(b)(i) and 36(2)(c) of the FOI Act which provide that information may be withheld where, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice, or otherwise prejudice the effective conduct of public affairs.

In relation to information held by NHS Improvement, the Chief Executive (Jim Mackey) is the qualified person for the purposes of section 36(2) for both Monitor and the TDA. The Chief Executive's opinion is that disclosure of the information within the scope of the request would inhibit the free and frank provision of advice, or would be likely to otherwise prejudice the conduct of public affairs. In particular –

- Disclosure would inhibit the free and frank provision of advice. The email from Alun Williams noted in your request was sent following a meeting between the Department of Health and NHS Improvement. It was sent by NHS Improvement to Foundation Trusts ('FTs') and NHS Trusts in order to assist policy discussions relating to the introduction of new contracts for junior doctors and therefore disclosing the information requested would inhibit the free and frank provision of advice by NHS Improvement to the Department of Health in relation to important NHS policy and operational matters. Disclosure would also inhibit the free and frank provision of advice by FTs and NHS Trusts to NHS Improvement as it would reduce the candour and frankness with which advice would be expressed, as those organisations would be concerned about the possibility that the communications would be made public. This would, in turn, limit frank, open and honest discussion about policy options on important NHS issues, with the resulting detrimental impact on the quality of policy development and decision-making in relation to the NHS. This would impact on the ability of the Department of Health and NHS Improvement to provide effective and co-ordinated support and management of the NHS.
- Additionally disclosure would be likely to prejudice the effective conduct of public affairs. The emails in question were part of the on-going relationship between senior officials at NHS Improvement and the Department of Health, conducted in the expectation that the discussions would not be made public. Disclosure of these emails would also be likely to damage the relationship of trust and confidence between NHS Improvement and FTs and NHS Trusts and therefore inhibit the free flow of views and information, with a detrimental impact on the ability of both the Department of Health and NHS Improvement to provide effective and co-ordinated support and management of the NHS.

Section 36(2) - public interest test

NHS Improvement's view is that the public interest in maintaining the exemption in section 36(2) of the FOI Act outweighs the public interest in disclosure.

In considering the balance, we have considered the public interest in transparency and openness in relation to decisions by public bodies, in particular decisions affecting the NHS.

In particular, in the present case the email exchanges included discussions in relation to a high profile and on-going issue within the NHS - junior doctors' contract negotiations - which potentially affects a large number of staff and patients in the NHS.

We have, however, also considered the public interest in allowing senior officials at NHS Improvement and the Department of Health to have free and frank discussions about NHS policy and the handling of major NHS operational issues. We have also considered the relationship of trust and confidence between NHS Improvement and FTs and NHS Trusts, and that if information provided by virtue of that relationship was generally made public, this would reduce the candour and frankness with which views were expressed, advice was given and information exchanged, which would affect the quality of the operation of the NHS. There is a strong public interest in ensuring that the Department of Health and NHS Improvement are able to have open and confidential discussions at a senior level, with input from FTs and NHS Trusts, in order to ensure effective and co-ordinated support and management of the NHS. We have also taken into account that, in relation to the risk that disclosure would inhibit free and frank provision of advice, the opinion of the qualified person for Monitor and TDA was that the prejudice would occur (i.e. it was more probable than not that the prejudice would occur).

We have also considered that the introduction of new contracts for junior doctors is an on-going policy and operational issue for the NHS, where policy and responses are continuing to develop. In particular, we note that the junior doctors' dispute is subject to negotiation and remains open to the threat of further industrial action.

Taking into account these considerations, our decision is that the balance of public interest is in 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 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,

A handwritten signature in black ink, appearing to read 'H. Buckingham', with a long horizontal stroke extending to the right.

Helen Buckingham

Executive Director Corporate Affairs

