

15 June 2016

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██████████
By email
████████████████████

Dear ██████████

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

I refer to your email of 27 April 2016 in which you requested information under the FOI Act. Since 1 April 2016, Monitor and the NHS Trust Development Authority (“TDA”) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

Your request

You made the following request:

“Please can you send me any well-led reviews or similar reports about the leadership of the following hospitals:

Worcestershire Acute Hospital Trust

Birmingham Women's NHS Foundation Trust and

Birmingham Children's Hospital NHS FT.”

Decision

NHS Improvement holds some of the information that you have requested. We hold a review about Worcestershire Acute Hospitals NHS Trust (the ‘Worcestershire report’) and Birmingham Women's NHS Foundation Trust (the ‘Birmingham report’) (together ‘the Trusts’) but not Birmingham Children's Hospital NHS Foundation Trust.

NHS Improvement has decided to withhold the information that it holds on the basis of the applicability of the exemptions in sections 31 and 41 of the FOI Act as explained in detail below.

Section 31 – law enforcement

We consider that the withheld information is exempt from disclosure under section 31(1)(g), which provides that information is exempt information if its disclosure would, or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

We consider that section 31(2)(c) is engaged, i.e. that disclosure of the information would be likely to prejudice the exercise by both Monitor and the TDA of its functions for the purposes of ascertaining whether circumstances exist which may justify regulatory action in pursuance of an enactment (section 31(2)(c)).

Birmingham Women's NHS Foundation Trust is currently subject to investigation. The information Monitor gathers is necessary to enable Monitor to assess whether a trust is in breach of its provider licence and to assess whether any further regulatory action might become necessary. To disclose this information more widely is likely to be prejudicial to the consideration by Monitor as to whether there are breaches of a trust's provider licence and whether circumstances exist that would justify further regulatory action.

Worcestershire Acute Hospitals NHS Trust has been put into "special measures" as a result of the Care Quality Commission's rating the Trust as inadequate. As part of the process to support the Trust to come out of special measures, the TDA commissioned a Board capability review (the "Worcestershire report"). The information the TDA gathered was necessary to enable the TDA to assess whether it needed to exercise its functions and to assess whether any further action might become necessary. By its very nature, the report names individual members of the Board and to disclose this information more widely is likely to be prejudicial to the consideration by the TDA as to whether circumstances exist that would justify action.

We also consider that disclosure of the information is likely to have a considerable impact on the willingness of NHS Trusts and NHS Foundation Trusts to provide information to NHS Improvement on an open basis and is likely to lead to less detailed information being provided. We consider that it is absolutely essential that NHS Improvement is able to communicate with the Trusts in a full and frank manner without concern that matters forming the basis of its on-going assessment will enter the public domain.

Public interest test

The public interest in accountability and transparency by making access to the information available has been weighed against the detrimental impact that is likely to ensue if disclosure is permitted. NHS Improvement publishes the details of its enforcement action against Foundation Trusts and, in the case of an NHS Trust in "special measures", the Trust publishes its response to the inadequate rating on its website and on NHS Choices. NHS Improvement considers that this information is sufficient to meet the public interest in transparency.

NHS Improvement has concluded that the need to avoid adversely affecting its continued monitoring and assessment of the Trusts and the need to ensure that other NHS Foundation Trusts and NHS Trusts are able to share information with NHS Improvement without fear

that such disclosures will enter the public domain outweighs the public interest in disclosure of the information that is being withheld.

Section 41 – information provided in confidence

Section 41(1) provides that information is exempt information if:

- a) 'it was obtained by the 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 both the Birmingham report and the Worcestershire report were obtained by NHS Improvement from third parties.

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

- (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) the disclosure of the information must amount to an unauthorised use of the information to the detriment of the confider.

NHS Improvement considers that disclosure of the information you have requested would necessarily reveal sensitive information regarding the Trusts, which would amount to an actionable breach of confidence.

Public interest test

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 nevertheless lies in favour of disclosure. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. In the present circumstances, we do not consider that there is a strong public interest in disregarding the duty of confidence owed to the Trusts.

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 [and the attached information] 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,



Rebecca Farmer
Senior Regional Manager



Jeff Worrall
Portfolio Director