

13 April 2016

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By email
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Dear ██████████

Request for an Internal Review of a decision under the Freedom of Information Act 2000 (the “FOI Act”)

I refer to your email of 01 March 2016 in which you requested an internal review of Monitor’s decision of 25 February 2016. That decision concerned your request for information held by Monitor on the use of “off-framework” agencies.

Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor.

Your Request dated 28 January 2016

In your email dated 28 January 2016 you made the following request:

“Would you please provide a list of the trusts that have (a) applied for permission to use off-framework agencies or (b) retrospectively reported use of off-framework agencies, since October 2015.

In each case please state the agencies involved.

For (a) please state whether permission was granted or not.

For (b) please state the number of shifts that each off-framework agency provided”.

Monitor’s Original Decision

Monitor decided to withhold the information requested on the basis of the application of the exemption in sections 31 and/or 33 of the FOI Act.

Your request for an internal review dated 01 March 2016

In your email dated 01 March 2016 you stated:

"I am concerned about your application of these exemptions, as well as the basis on which the public interest tests have been carried out. For this reason I would be grateful if you could carry out an internal review of your handling of this request ."

Internal Review- Decision

I have now conducted a review of the original decision. I have decided that it should be upheld for the reasons set out in full in the decision itself. I will not repeat the reasons set out in the decision letter, save to correct one point of detail. In gathering information in relation to NHS trusts, Monitor is carrying out functions in support of the TDA. Whilst the TDA has functions in relation to the examination of the economy, efficiency and effectiveness with which NHS trusts use their resources, for the purposes of section 33(2) of the FOI Act it is Monitor's functions that would be jeopardised if the information were to be disclosed.

In undertaking this review I have considered the specific points that you make in your email of 01 March 2016. In response to those points:

- a. I note your view that the information is neither sensitive nor confidential and that providers are "more than likely to have a reasonable expectation that the information would be publicly disclosed". In my view the sensitivity of the information cannot be divorced from the regulatory context, whether in relation to Monitor's audit functions or in relation to law enforcement. The framework Rules do not provide for publication of raw information and it is not clear to me that trusts would have had an expectation that the specific trust level information would be publicly disclosed. The position is of course quite different if Monitor opens an investigation, as the decision letter of 25 February notes. In those cases Monitor proactively publishes details and I agree that providers should be expected to be aware that this is the case.
- b. Both Monitor and the TDA rely on the effective working relationships they build with providers. Those relationships are important in the context of the provision of information for regulatory purposes. In my view release of this information would be likely to prejudice those relationships and the willingness of providers to provide information in an open, timely and transparent manner.

I consider this approach consistent with that taken by Monitor elsewhere on agency data and the Risk Assessment Framework, where aggregate level information has been shared but trust-level information is only shared once an investigation has been opened.

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 blue ink, appearing to read 'John Curnow', is positioned below the closing text.

John Curnow
Economics Director