

01/02/2016

[REDACTED]
[REDACTED]

By email

[REDACTED]

Dear [REDACTED]

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

I refer to your email of **11 December 2015** in which you requested information under the FOI Act, and to our partial response (covering questions 2 – 9 in your request) of **14 January 2016**. In that letter, we explained that our response to question 1 in your request would follow.

This letter is our response to question 1 in your request, which is set out below.

“Please provide the responses to the consultation which Monitor states that it has taken into account, excluding those responses from doctors, nurses and unions.”

Decision

Monitor holds the information that you have requested.

When sending out our consultation, we asked respondents to indicate whether or not they wanted their response to be kept confidential. Where respondents requested part or all of their response to be kept confidential, we have done so accordingly.

Monitor has decided to release some of the information that it holds, and we will send this to you electronically as requested. To be clear, this information consists of all non-confidential responses (excluding those from doctors, nurses and unions). Please note that we have removed all personal details from these responses under section 40 of the FOI Act.

Section 41 – Information provided in confidence

We consider that the withheld information is exempt under section 41 of the FOI Act. Section 41(1) provides that information is exempt 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 the information was obtained by Monitor by 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. This means:

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

Monitor considers that disclosure of the information would amount to an actionable breach of confidence. Section 41 is an absolute exemption and does not require the application of the public interest test under section 2(2) of the FOI Act. 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 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, Monitor does not consider that there is a strong public interest in disregarding the duty of confidence owed to the third parties who have specifically asked for their responses to be kept confidential and to those who have not authorised us to release the information they have sent.

Third parties should be able to share information and concerns with Monitor in the expectation that this will be kept confidential. Monitor considers that it is crucial for trust to be maintained by third parties who impart information, and that disclosure of information which is imparted in confidence may inhibit the full and frank disclosure to Monitor of relevant concerns.

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 Monitor of the issue or the decision. A senior member of Monitor'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 conducted by Monitor, 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, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to foi@monitor.gov.uk.

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,

A handwritten signature in black ink, appearing to read 'C. Mullin', with a horizontal line extending to the right.

Chris Mullin
Economics Director