

23 December 2015

[REDACTED]

By email [REDACTED]

Dear [REDACTED]

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

I refer to your email of **30 November 2015** in which you requested information under the FOI Act.

Your request

You made the following request:

‘Please supply a copy of the 5 year capital plan recently submitted to Monitor by Guy’s and St Thomas’ NHS Foundation Trust.’

Decision

Monitor holds the information that you have requested.

Monitor has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in sections 31 and 33 of the FOI Act as explained in detail below. It is Monitor’s normal practice not to disclose the regulatory submissions of individual providers.

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)(a) and section 31(2)(c) are engaged, i.e. that disclosure of the information would be likely to prejudice the exercise by Monitor of its functions for the purposes of either ascertaining whether the trust has failed to comply with the law (section

31(2)(a)) and/or, ascertaining whether circumstances exist which may justify regulatory action in pursuance of an enactment (section 31(2)(c)).

The trust is under review. We are requesting further information following a deterioration in the trust's financial position, before deciding next steps. The 5 year capital plan recently submitted to us by the trust is necessary to enable us to assess whether the trust is in breach of its provider licence and to assess whether regulatory action might become necessary. To disclose this information more widely is likely to be prejudicial to the consideration by us as to whether there are breaches of the trust's provider licence and whether circumstances exist that would justify regulatory action.

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. The deterioration in the trust's financial position is a live issue, and as such, we are still in the process of reviewing the information that we hold relating to the trust's financial position. We have published a copy of the trust's annual report and accounts 2014-15 on its website, which you can view via the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451443/GUYS_Annual_Report_and_Accounts_2014-15.pdf).

We consider that this information is sufficient to meet the public interest in transparency. We will also proactively publish details of any regulatory action we decide to take once our review has been completed.

We have therefore concluded that the need to avoid adversely affecting our continuing monitoring and assessment of the trust outweighs the public interest in disclosure of the information that is being withheld.

Section 33 – audit functions

Section 33(1)(b) and 33(2) of the FOI Act provide that information may be exempt from disclosure where disclosure would, or would be likely to, prejudice the exercise of any public authority's functions in relation to the examination of economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

We are of the view that disclosure of the 5 year capital plan would be likely to prejudice the exercise of our functions in relation to the examination of economy, efficiency and effectiveness with which other public authorities (the trust in this case) use their resources in discharging their functions.

We rely on the full and frank provision of information from NHS foundation trusts in order to carry out our functions effectively. This is an extension of one of our core regulatory principles which is to operate a trust-based approach to our relationships with NHS foundation trusts. Accordingly we would not wish to prejudice that relationship of trust and confidence. There is potential prejudice to that relationship and to the effective and efficient

gathering of information, and accordingly to our ability to regulate the NHS foundation trust sector, if sensitive information which NHS foundation trusts provide to us is disclosed prematurely. Trusts would be less likely to co-operate and provide full disclosure. Although Monitor has statutory powers to compel trusts to provide information, we are better able to exercise our functions if information is provided voluntarily as part of the relationship. In consequence there is a potential detriment to the system of regulation of NHS foundation trusts. For these reasons, we consider that disclosure of 5 year capital plan is exempt under section 33.

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 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,



William Bessell
Sector Finance & Reporting Manager