

8 August 2016

Wellington House
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London SE1 8UG

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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 emails of 12 and 22 July 2016 in which you requested information under the FOI Act from NHS Improvement. 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

You made the following request on 12 July, in relation to the employee support scheme (the Scheme) recommended by Sir Robert Francis QC in Freedom to Speak Up:

“My interest relates to how the programme is being developed. Could NHS Improvement please share its written timetable for this work programme and all relevant reports and meeting records so far, to provide whistleblowers with an update. I’d be grateful if NHS Improvement could also advise what whistleblower input is informing its process in establishing the scheme.”

You then extended that request, on 22 July:

“What is the NHSI budget for its part of the whistleblower re-employment scheme?”

Decision

NHS Improvement holds some of the information within the scope of your request.

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)(b)(ii) of the FOI Act, as explained in detail below.

Written timetable

NHS Improvement does not hold this information. While we aim to start trialling the Scheme this year, we are still working on ensuring we have a good understanding of the issues the Scheme raises. Once that work is complete, we will then be in a position to produce a timetable.

Reports

NHS Improvement holds drafts of a proposal for the development of the Scheme. This document has not yet been finalised. It also holds a paper from the National Clinical Assessment Service (NCAS) and an internal paper regarding the Scheme for senior staff at NHS Improvement.

Section 36(2) (prejudice to effective conduct of public affairs)

NHS Improvement has decided to withhold all of the above information on the basis that it falls within section 36(2)(b)(ii) of the FOI Act (prejudice to the conduct of public affairs) and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The exemption is engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)).

The information described above relates to the approach to be taken in relation to the Scheme. In order to carry out their functions, NHS Improvement and other national health care bodies (including NHS England and NCAS) must be able to hold free and frank discussions about NHS policy, both internally and with each other, without concern that the detail of those discussions will be disclosed inappropriately. If this material were published, it would be likely to restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. That would have an adverse impact on the ability of NHS Improvement to hold effective discussions on NHS policy, both internally and with other national health care bodies.

In addition, the paper from NCAS is marked in confidence. Disclosure of this paper would be likely to damage the relationship of trust and confidence between NHS Improvement and NCAS, as well as inhibit the free flow of information.

Public interest test

NHS Improvement's view is that the public interest in maintaining the exemption outweighs the public interest in disclosure. In considering the balance, we have considered the public interest in transparency and openness in relation to NHS policy. In particular, in the present case, there is a public interest in the public understanding the development of the Freedom to Speak Up recommendations.

We have also considered, however, the strong public interest in NHS Improvement and other national health care bodies being able to hold free and frank discussions about NHS policy, both internally and with each other, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring those organisations are able to have the open and confidential discussions necessary to ensure effective NHS policy. In addition, information regarding the Scheme will be published when plans for it are finalised.

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

Meeting records

NHS Improvement does not hold this information.

Whistleblower input

Workshops were run by NHS England which involved whistleblowers in late 2015 and early 2016. These were extremely helpful and gave us much to consider. We have not sought any specific further input from whistleblowers since then.

NHS Improvement budget

NHS Improvement does not hold this information. At this stage, no budget has been agreed.

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, I am happy to discuss it to try to resolve any concerns informally. 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 'Tom Grimes', with a stylized, cursive script.

Tom Grimes

Head of Enquiries, Complaints and Whistleblowing