

18 February 2016

By email

Dear [REDACTED]

Request under the Freedom of Information Act 2000 (the "FOI Act")

I refer to your email of 27 January 2016 in which you requested information under the FOI Act.

Your request

You made the following request:

"Under the Freedom of Information Act and in particular reference to the recent publications on 'National Price caps for agency staff working in the NHS, I write to request the following information:

- 1. What percentage of shifts were breached across the whole of England from 23/11/2015 to date?*
- 2. For each NHS Trust in England, how many shifts were compliant to the caps from 23/11/2015 to date?*
- 3. For each NHS Trust in England, how many shifts were in breach of the caps from 23/11/2015 to date?*
- 4. If known, how many shifts, per grade and speciality, were in breach of the caps from 23/11/2015 to date?"*

Decision

Question 1

Monitor does not hold the information that you have requested in question 1 of your request. This is because NHS foundation trusts and NHS trusts only report weekly on the number of agency shifts where they have made payments in excess of the price caps (question 4). They do not, therefore, report generally on the number of shifts filled by agency staff and so Monitor does not hold information on the number of shifts actually used to enable the

percentage you request. However, we estimate that this may be approximately 165,000 agency shifts per week across the country.

Question 2

Monitor does not hold the information that you have requested in question 2 of your request. This is because NHS foundation trusts and NHS trusts only report weekly on the number of agency shifts where they have made payments in excess of the price caps (question 4).

Question 3

Monitor has decided to withhold all of the information that it holds on the basis of the applicability of the exemption in section 33 of the FOI Act as explained in detail below.

Section 33 – public 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 the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

Monitor considers that the information about NHS trusts is exempt under section 33(1)(b) of the FOI Act on the basis that the Trust Development Authority (the "TDA") has functions relating to the examination of the economy, efficiency and effectiveness with which NHS trusts use their resources in discharging their functions, which would be prejudiced by the release of the information requested. The TDA's functions under Section 4 of the National Service Trust Authority Directions 2013 extend to scrutinising whether Trusts are using their resources efficiently and effectively and are dependent upon having a safe space in which NHS trusts are able to share sensitive and confidential information with the TDA without fear of it being shared more widely.

Public interest test

Section 33 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained.

We consider that in relation to the finances of public authorities there is a public interest in transparency. The public interest in accountability and transparency by making the information available has been weighed against the detrimental impact that is likely to ensue if disclosure is permitted.

The ability of the TDA to perform its functions would be adversely affected by the disclosure of the information. Providers do not expect that such sensitive and confidential information will be placed in the public domain and if they were to consider that the information they provided could be disclosed, they may be less likely to provide it or in the detail that they do. Consequently, this would have a detrimental on the ability of the TDA to perform its functions.

Please note that NHS trusts are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act.

Question 4

Monitor holds the information that you have requested and has decided to release part of it from the week commencing 23 November 2015 to the week commencing 28 December 2015. It is set out in the attached Annex. Please note that we do not receive information on staff grade and speciality, only role.

Monitor has decided to withhold the remaining information that it holds on the basis of the applicability of the exemption in section 22(1) of the FOI Act as explained below.

Section 22 – Future publication

Section 22 provides that information is exempt information if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

Monitor will be publishing information on the level of shifts in breach of the price caps (for the monitoring periods) on its website in due course.

Public interest test

The exemption under section 22 of the FOI Act is subject to a public interest balancing test. The public interest in accountability and transparency by making the information publicly available has been weighed against the detrimental impact that is likely to ensue if premature disclosure is made before Monitor has been able to ensure the quality of the data. In recognition of the public interest in transparency, Monitor will proactively publish this information on its website shortly. We have therefore concluded that the public interest in disclosure of the information at this stage is outweighed by the need to ensure accuracy in the numbers which are due to be published.

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.

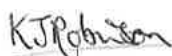
If you are dissatisfied with the outcome of any internal review conducted by Monitor, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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,



Katharine Robinson
Senior Manager – Finance

ANNEX

Part (b)	Number of shifts exceeding price caps					
	w/c 23 Nov 2015	w/c 30 Nov 2015	w/c 7 Dec 2015	w/c 14 Dec 2015	w/c 21 Dec 2015	w/c 28 Dec 2015
Nursing & Midwifery & Health Visiting	14,913	14,943	14,016	12,035	8,797	7,848
Medical & Dental	10,358	10,955	9,877	9,806	8,741	7,944
Scientific, Therapeutic & Technical (AHPs)	3,121	4,076	3,353	3,171	2,284	1,771
Health Science	236	309	241	320	269	191
Healthcare assistants and other support	839	826	877	572	729	654
Administration and Estates	5,876	5,914	5,377	5,351	3,905	2,603
Other	319	386	307	485	427	266
TOTAL	35,662	37,409	34,048	31,740	25,152	21,277