

30 October 2015

██████████
153 Swift Close
Deeping St James
Peterborough PE6 8QS

Dear ██████████

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

I refer to your letter of **30 September 2015** in which you requested information under the FOI Act regarding Peterborough City Hospital, which is part of Peterborough and Stamford Hospitals NHS Foundation Trust (“the Trust”).

Your request

You made the following request:

- *“whether or not there is a safety risk from fire to those who use the buildings and what is the problem;*
- *when did that risk occur and what actions have been taken by you and the hospital to ensure the building and its services are perfectly safe at all times; and*
- *if there is a safety issue, when will the buildings be absolutely safe regarding this issue.”*

Decision

Monitor holds some of the information that you have requested. Please note that the Trust is under enforcement action and so we hold monthly progress review meetings with the Trust, during the course of which we have obtained information relevant to your request.

Monitor has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in section 31, 33, 41, and 43 of the FOI Act as explained in detail below.

Monitor is the sector regulator of NHS-funded health care services, our main duty being to protect and promote the interests of patients by regulating the provision of health care services to ensure it is effective, efficient and economic, and maintains and improves the quality of services. We continue to assess NHS trusts for foundation trust status and license foundation trusts to ensure they are well-led, in terms of both quality and finances. We also set prices for NHS-funded care; enable integrated care; safeguard choice and prevent anti-competitive behaviour which is against the interests of patients; and support commissioners to protect essential health services for patients if a provider gets into financial difficulties. More information on our role can be found [here](#):

<https://www.gov.uk/government/organisations/monitor/about>

Please note that NHS foundation trusts are subject to the FOI Act and as such it is open to you to seek information directly from the Trust. It will need to consider whether information can properly be provided in response to any such request within the terms of the FOI Act. In this particular case, we would suggest that the Trust is the more appropriate body to deal with your request.

As you will appreciate from the description of our role above, Monitor is not responsible for assessing health and safety in any official capacity and cannot comment on the extent to which the Trust buildings are safe in that respect. Any information we have gathered relating to this matter has been solely in the context of our on-going enhanced monitoring of the Trust given that it is in breach of its provider licence, and we have decided not to disclose the information we hold in that capacity.

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 certain providers have 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 was found in breach of its provider licence in April 2013. Since then, the Trust has been subject to enhanced monitoring by Monitor which has led to the Trust providing Monitor with regular information updates. The information provided by the Trust to Monitor has been necessary to enable Monitor to determine what progress the Trust is making towards addressing the breach of its licence and assessing what further regulatory action might become necessary.

To disclose this information more widely is likely to be prejudicial to the consideration by Monitor as to whether circumstances exist that would justify further regulatory action. We consider in particular, that disclosure of this information is likely to have a significant impact on the willingness of the Trust to provide such information to us on an open basis, and is likely to lead to less detailed information being provided, particularly as regards its financial situation. We consider it important that the Trust feels able and willing to provide full and frank disclosure of issues.

Since being found in breach, the Trust has been required to attend regular progress update meetings with Monitor. Following these meetings, Monitor has written to the Trust setting out the matters that have been discussed and Monitor's outstanding areas of concern. We consider that to disclose this correspondence to you, even after appropriate redactions are made so that only the information relating to the fire safety issues remained, would be highly prejudicial to Monitor's ongoing regulation of the Trust and in particular, its consideration of whether further regulatory action should be taken.

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. As mentioned above, the Trust is being closely monitored and Monitor is therefore continuing to assess the concerns that it has. Monitor routinely proactively publishes details of any regulatory action it decides to take as a result of its investigations. Monitor considers that this information is sufficient to meet the public interest in transparency.

Monitor has concluded that the need to avoid adversely affecting its continued monitoring and assessment of the Trust and the need to ensure that the Trust and other NHS foundation trusts are able to share information with Monitor without fear that such disclosures will enter the public domain outweighs the public interest in disclosure of the information that is being withheld.

Section 33 – audit functions

Section 33(1)(b) provides that information is exempt from disclosure where this would be likely to prejudice the exercise of any of a 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 is responsible for regulating all NHS foundation trusts and has a responsibility for examining the performance of NHS foundation trusts. In particular, NHS foundation trusts are required to comply with the terms of their licence, one of the conditions of which is that trusts shall exercise their functions effectively, efficiently and economically.

As noted above, Monitor has determined that the Trust is in breach of its licence (including this particular condition). Disclosure of the withheld information is likely to prejudice the relationship between Monitor and the Trust and therefore likely to affect the ability of Monitor to carry out its functions effectively. Although Monitor has statutory powers that enable it to require NHS foundation trusts to provide information to it, Monitor is better able to exercise its functions if such information is provided voluntarily as part of an open relationship.

Public interest test

We acknowledge that there is a public interest in making information available to the public in order to facilitate scrutiny of how Monitor carries out its regulatory duties. We consider that the public interest lies in favour of not causing prejudice to Monitor's ongoing consideration of the Trust's regulatory position and ensuring that the Trust and other NHS foundation trusts are not inhibited in providing future disclosures of a similar nature.

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 information 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 from a third party, in this case the Trust.

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 relevant 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 Trust.

Third parties should be able to share information and concerns with Monitor in the expectation that this will be kept confidential, and this is particularly important for providers who are sharing information with Monitor regarding their performance, and for whom disclosure may have negative consequences. Monitor considers that it is crucial for trust to be maintained by third parties who impart information in such circumstances, and that disclosure of information which is imparted in confidence may inhibit the full and frank disclosure to Monitor of information that we need to make regulatory decisions.

In recognition of its duty of transparency, Monitor proactively publishes information on its website which leads it to take regulatory action.

Section 43 – commercial interests

Monitor considers that the withheld information is exempt under section 43 of the FOI Act. This provides that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

The information you have requested is by its very nature commercially sensitive and its disclosure is likely to be detrimental to the Trust’s legitimate commercial interests. For example, creditors, commissioners and others seeking to negotiate contracts with a provider could use the information to strengthen their own bargaining positions when negotiating for,

or providing services to that provider. In addition, competitors may be able to use such information to their advantage to the detriment of providers' legitimate interests.

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.

In recognition of the public interest in transparency, Monitor will proactively publish information on its website about on-going regulatory action in relation to providers. We have concluded that the public interest in disclosure of the information in question is outweighed by the need to ensure that the Trust (and other NHS foundation trusts) is able to communicate with Monitor in a full and frank manner without concern that those matters will enter the public domain.

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.

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,



Nicholas Beth

Senior Regional Manager