

16 December 2015

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

I refer to your emails of 17 November and 21 November 2015 in which you requested information under the FOI Act. I will respond to both of your emails in this letter.

**Your request**

You made the following request on 17 November 2015:

*“I am sure you will have published the data somewhere. The foundation trust sector “ended the first 3 months of the financial year 2015/2016 with a £445m net deficit. Could I have that broken down trust by trust please. I am particularly interested in the performance of acute trusts (Foundation trusts or not). It would also be useful to have the planned position for each trust, to see where the £90m has come from. It would also be useful to see the planned deficits for each acute trust going forward.*

*If it is not published somewhere, can I request that data under the FOI act please?”*

You then made the following further request on 21 November 2015:

*“May I also request the recently publicised second quarter results from this year too please?”*

**Decision**

Monitor holds the information that you have requested in relation to NHS foundation trusts. Monitor does not hold the information you have requested in relation to NHS trusts. You may wish to contact the NHS Trust Development Authority or individual NHS trusts in relation to obtaining this information in relation to NHS trusts.

Monitor has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in sections 21, 31 and 33 of the FOI Act, as explained in detail below.

**Section 21 (information accessible to applicant by other means)**

Section 21(1) of the FOI Act provides that information is exempt if it is reasonably accessible to the applicant by other means.

In some cases NHS foundation trusts have stated their current deficit figures and/or their planned deficit figures for Q1 and Q2 2015/16 in their public Board papers, which are available on their websites.

### **Section 31 (law enforcement)**

Section 31(1)(g) of the FOI Act provides that information is exempt from disclosure if it would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection 31(2). Monitor believes that disclosure of the current deficit figures and planned deficit figures would be likely to prejudice its regulatory functions (section 31(2)(c)).

In order for us to effectively regulate NHS foundation trusts, including assessing whether they are financially sustainable, we rely on NHS foundation trusts sharing their information with us. In turn, NHS foundation trusts have a reasonable expectation that we will treat sensitive information that they submit to us as confidential. The Q1 and Q2 2015/16 current and planned foundation trust deficit figures may enable us to detect any early signs of whether or not foundation trusts may be at risk of breaching the conditions of their provider licence. Disclosing the information would be likely to prejudice our ability to consider any potential concerns about foundation trusts' financial performance. Releasing the information would give NHS foundation trusts reason to believe that we may disclose sensitive information about their finances prematurely (for example before we have determined whether or not it is appropriate to take enforcement action) and may reduce the amount and quality of information of information that they are prepared to share with us voluntarily in future. This would have a detrimental impact on the open relationship of trust that we have built with the sector.

### **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.

Monitor is of the view that disclosure of the Q1 and Q2 2015/16 current and planned foundation trust deficit figures would be likely to prejudice the exercise of its functions in relation to the examination of economy, efficiency and effectiveness with which other public authorities (acute NHS foundation trusts in this case) use their resources in discharging their functions.

Monitor relies on the full and frank provision of information from NHS foundation trusts in order to carry out its 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 accordingly to the ability of Monitor to regulate the NHS foundation trust sector, if sensitive information which NHS foundation trusts provide to Monitor is disclosed prematurely. In consequence there is a potential detriment to the system of regulation of NHS foundation trusts. For these reasons, we consider that disclosure of the current deficit figures and planned deficit figures is exempt under section 33.

#### *Public interest test*

Section 31 and 33 of the FOI Act are qualified exemptions and therefore require that a public interest test be carried out to determine whether the exemption should be maintained. The test is whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We consider that there may be a public interest in disclosing the Q1 and Q2 2015/16 current and planned foundation trust deficit figures given the public

interest in the financial health of public sector bodies. However, we consider that there is a stronger public interest in giving Monitor and acute foundation trusts space to discuss current deficit figures and planned deficit figures and time to consider how to address any issues identified in those figures without premature disclosure.

Further, Monitor considers that the public interest in the performance of foundation trusts and Monitor's regulatory activity is satisfied by the information that is currently in the public domain. In the interest of transparency, Monitor publishes information on its website about the performance of each NHS foundation trust, including the following:

- Monitor's assessment of the risk of each NHS foundation trust's non-compliance with the continuity of service and governance conditions of their licence;
- whether Monitor has opened an investigation into a NHS foundation trust's compliance with its licence, including evidence of breaches; and
- any enforcement taken by Monitor against a NHS foundation trust for non-compliance with its licence conditions.

Monitor publishes quarterly performance reports in which it states the aggregate planned deficit position of the NHS foundation trust sector and summarises the performance of the sector.

In addition, information about the deficit position for acute NHS foundation trusts at the end of the 2014/2015 financial year is available in their annual report and accounts for 2014/2015.

We consider that the public interest is therefore satisfied by the information already available.

### **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](mailto: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 Freedom of Information Act 2000 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,



**Jason Dorsett**  
Financial Reporting & Risk Director