

21/10/2016

Wellington House  
133-155 Waterloo Road  
London SE1 8UG

T: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

████████████████████  
**By email**  
████████████████████

Dear ████████████████████

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

I refer to your email of 25 September 2016 in which you requested information under the FOI Act. 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:

*I write to request information held by NHS Improvement as follows:*

*All notes made by the NHS Improvement independent review team led by Dr Chris Gray during their site visit to Lancashire Teaching Hospitals Trust on 22nd and 23rd August 2016*

*Notes made by the independent review team during meetings with North West Ambulance Service, the Chief Officer for Chorley and South Ribble/Greater Preston CCGs, Chorley Protest Action Group and Mr Lindsay Hoyle MP.*

*Any subsequent file notes, letters and electronic communications regarding drafting and amendments to the report "External Review of Closure of Chorley and South Ribble Hospital Emergency Department", whether to or from external bodies, or internal to NHS Improvement.*

*Please treat this as a formal request pursuant to the Freedom of Information Act; I am happy to receive your response in electronic or written format.*

We have interpreted your request to be a request for the following:

1. All notes made by the review team during their site visit to Lancashire Teaching Hospitals Trust on 22nd and 23rd August 2016;

2. All notes made by the independent review team during meetings with North West Ambulance Service, the Chief Officer for Chorley and South Ribble/Greater Preston CCGs, Chorley Protest Action Group and Mr Lindsay Hoyle MP;
3. Any subsequent file notes, letters and electronic communications regarding drafting and amendments to the report *External Review of Closure of Chorley and South Ribble Hospital Emergency Department* including all emails to/from NHS Improvement to/from third parties and internal NHS Improvement emails and file notes relating to the report. We have interpreted this as covering the period 24 August to 25 September 2016.

## **Decision**

In relation to parts 1 and 2 of your request NHS Improvement does not hold this information. NHS Improvement commissioned jointly with NHS England an independent review of the options for the reopening of emergency services at the Chorley Emergency Department. The terms of reference for this review provided for a draft of this report to be shared with NHS England and NHS Improvement however, no underlying materials were shared with NHS Improvement.

In relation to part 3 of your request NHS Improvement holds the information that you have requested.

NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemptions in sections 21, 36 and 42 of the FOI Act as explained in detail below.

### ***Section 21 (information reasonably accessible by other means)***

The information that NHS Improvement holds includes draft and final versions of the report. NHS Improvement considers that the majority of this information is already available in the published report which can be found at: <http://www.lancsteachinghospitals.nhs.uk/latest-news/review-recommends-reopening-12hour-ae-at-chorley-2379>

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

Some of the information that NHS Improvement holds does not fall within section 21 above. This includes information included in draft versions of the report that was not included in the final report and emails between NHS Improvement, the review team and third parties as well as internal NHS Improvement emails. NHS Improvement has decided to withhold this 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 requested relates to the consideration by NHS Improvement and NHS England of the draft report on options for the safe provision of emergency services at Chorley prior to this report being published. In order to carry out its functions, NHS Improvement (and any independent reviewers commissioned by NHS Improvement) must be able to hold free and frank discussions with review teams about their findings and the appropriate form in which those findings are published, 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 and the content of draft materials provided to NHS Improvement, as individuals would be concerned about the possibility that those views and discussions would be made public. That would in turn, limit the information provided to reviewers in conducting their reviews and by reviewers to NHS Improvement, and have an adverse impact on the ability of NHS Improvement to effectively consider whether intervention and support is required.

#### *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 external reviews that are carried out. In particular, in the present case, there is a public interest in the public understanding the findings of the independent review team at Lancashire Teaching Hospitals NHS Foundation Trust.

We have also considered, however, the strong public interest in NHS Improvement being able to hold free and frank discussions internally and with providers and other interested parties where it is considering what intervention and support (if any) is necessary, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring reviewers are able to provide NHS Improvement with information prior to forming their final conclusions and that NHS Improvement is able to consider this information through open and confidential discussions. The final conclusions of these discussions have been made public in the form of the published report.

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

#### ***Section 42 (legal professional privilege)***

Section 42 provides that information is exempt if a claim could be made for legal professional privilege. This covers confidential communications between lawyers and their clients for the purpose of seeking or giving legal advice.

Some of the internal emails within the scope of your request include emails between NHS Improvement's legal team and the regional team for the purpose of seeking, and giving, legal advice.

We have weighed the public interest in accountability and transparency by making access to the information contained in these emails available against the detrimental impact that might ensue if disclosure is permitted. There is a strong public interest in protecting the

confidentiality of exchanges between legal advisers and their clients. The advice provided in these emails by the legal team to the regional team was for the purposes of giving legal advice to assist the regional team in its consideration of the draft report. In that context there is no clear, compelling or specific reason for disclosure of legal advice and in my opinion the public interest is best served by applying this exemption.

### **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 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](mailto:nhsi.foi@nhs.net).

### **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,

A handwritten signature in black ink that reads "Anne Gibbs". The signature is written in a cursive style and is underlined with a single horizontal line.

**Anne Gibbs**

Delivery and Improvement Director Greater Manchester and Lancashire