

14/01/2016



By email



Dear 

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

I refer to your email of **11 December 2015** in which you requested information under the FOI Act.

Your request

You made the following request:

1. *Please provide the responses to the consultation which Monitor states that it has taken into account, excluding those responses from doctors, nurses and unions.*
2. *Please provide all relevant information and documentation used to calculate the capped rates in question, namely 100% (above basic) on 23 November 2015; 75% (above basic) on 1 February 2016 and 55% (above basic) on 1 April 2016 – for other medical staff, including nurses?*
3. *Please provide all relevant information and documentation held in relation to other capped rates considered by Monitor (for other medical staff, including nurses)?*
4. *Please provide all relevant information and documentation held in relation to other staged introduction dates (for the caps) by Monitor?*
5. *Please provide the relevant information and documentation held by Monitor after 15 October 2015 in relation to the decision to exclude bank staff from the operation of the caps (to include NHS Professionals LTD) ?*
6. *Please confirm that in adopting the caps proposals and/or policy, Monitor gave consideration to: (a) the current framework agreements and agreed rates within those framework agreements between agencies and Trusts; and (b) the need for Trusts to honour those current framework agreements and agreed rates within those framework agreements, which apply both before and after 23 November 2015. Please provide all relevant information and documentation in relation to those considerations?*
7. *Please provide all relevant information and documentation held by Monitor as to its consideration of Monitor's and NHS Trusts' obligations to comply with their public equality duties under S.149 of the Equality Act in introducing the caps?*

Decision

Question 1

Monitor holds the information you have requested. As there is a substantial amount of information that we need to process before deciding our position on disclosure, we regret that we have not been able to review it all within the 20 days. We will try to respond to you on this part of your request as soon as possible.

Questions 2, 3, 4, 5, 6 and (in part) 7

Monitor has decided to withhold the information in these parts of your request under section 36 of the FOI Act, which is explained in detail below.

Section 36

We consider that section 36(2)(b)(ii) of the FOI Act is engaged in relation to this information.

Section 36(2)(b)(ii) provides that information is exempt from disclosure if it would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.

The information in question represents colleagues exchanging views with the aim of arriving at a final strategy regarding the rules around price caps. We consider that disclosure of this internal correspondence on the subject of the request would be likely to inhibit Monitor staff to express themselves openly, honestly and completely, and to explore extreme options, when giving their views as part of a process of deliberation.

This in turn is likely to impair the quality of decision making by Monitor of future policies, as the loss of frankness and candour may damage the quality of deliberation and lead to poorer decision making.

To the extent that information covered by this exemption is included in the information requested, that information is being withheld from disclosure under section 36 of the FOI Act and Monitor's qualified person (Chief Executive) has approved the use of this section.

Public interest test

Monitor considers that the public interest in maintaining the exemption does outweigh the public interest in disclosure of the information, as staff within Monitor need to be able to have candid discussions and express themselves openly when deliberating over major policies with each other.

Monitor recognises that, as a public body, it should be transparent and open in the conduct of its public functions. In recognition of this, we have published details of our decision making at each stage on our website, in the form of our engagement document and guidance, impact assessment and our response to the consultation:

<https://www.gov.uk/government/consultations/national-price-caps-for-agency-staff-working-in-the-nhs>

As disclosure of the information is likely to inhibit the expression of views in relation to a recently launched policy, Monitor has decided that the public interest in disclosure is outweighed by the need to safeguard the free and frank exchange of views within Monitor.

Question 6

We can confirm that in adopting the price cap rules and policy, Monitor engaged with framework owners to inform our approach. Our guidance (which can be accessed from our website via the link above) explains our expectations around the interaction between framework agreements and the price cap rules.

We have decided to withhold the information and documentation we hold in relation to these considerations under section 36 of the FOI Act, for the reasons explained above.

Question 7

The information that we hold in relation to this part of your request consists of legal advice between our Legal department and Economics and Policy departments, as well as internal correspondence within the Economics, Policy, and Finance departments.

Monitor has decided to withhold the former under section 42 of the FOI Act and the latter (for reasons explained above) under section 36 of the FOI Act.

Please note that Monitor does not hold information regarding NHS trusts' obligations to comply with their public equality duties, or those of NHS foundation trusts.

Section 42

Section 42(1) of the FOI Act provides that information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

Legal professional privilege covers confidential communications between lawyers and their clients made for the dominant purpose of seeking or giving legal advice. We consider that section 42(1) is engaged in relation to the correspondence between Monitor's legal advisers and its Policy and Economics departments as such communications are covered by legal professional privilege.

Public interest test

As section 42 is a qualified exemption under the FOI Act, we have considered whether the public interest weighs in favour of not releasing the information requested. We have decided that as free, frank and confidential exchanges between a client and their lawyer are essential in our legal system and help ensure fairness, the public interest in maintaining the exclusion of releasing the information you have requested outweighs any public interest in disclosing it.

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,

A handwritten signature in black ink, appearing to read 'C. Mullin', with a horizontal line extending to the right.

Chris Mullin
Economics Director