

21 December 2015

[REDACTED]

By email [REDACTED]

Dear [REDACTED]

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

I refer to your email of **23 November 2015** in which you requested information under the FOI Act.

Your request

You made the following request:

‘Please can you advise me in regards to the last 5 years:

- 1) How many compromise agreements has Monitor entered into with staff or former staff?*
- 2) How many of these compromise agreements require staff members not to disclose the existence of the compromise agreement itself?*
- 3) How many of these compromise agreements contain non-disparagement clauses that require staff members not to criticise the employees of Monitor?*
- 4) How many of these compromise agreements were entered into by Monitor with staff who had previously made public interest disclosures, (whether or not these were raised by formally invoking Monitor’s internal whistleblowing policy)?*
- 5) If staff who have entered into a compromise agreement with Monitor were to voice concerns about reprisal by Monitor for whistleblowing, would Monitor consider this to be a breach of non-disparagement clauses, or would it consider the raising of such concerns to be qualifying disclosures under PIDA?’*

Decision

Monitor holds the information you have requested except in relation to Question 5.

Question 5 is speculative and Monitor does not hold any information which dictates how we would respond in the situation you describe.

With regards to Questions 1-4, I have decided not to disclose the information held by Monitor on the basis of section 40(2) of the FOI Act (the exemption from disclosure of personal data).

In order for the section 40(2) exemption to be engaged, the information being requested must firstly constitute personal data as defined by the Data Protection Act 1998 (DPA). The DPA defines personal information as:

*“...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or
is likely to come into the possession of, the data controller...”*

Secondly, the release of the information pursuant to a FOIA request must amount to a contravention of any of the data protection principles.

Although the information requested does not expressly identify individual members of staff, I consider that the information could potentially lead to the individuals being identified when considered in conjunction with other available information. Accordingly, I consider that release of this information to you, in the absence of consent from the individuals involved, would amount to unfair and unlawful processing i.e. a contravention of the first data protection principle. Section 40(2) of FOIA is an absolute exemption meaning that it is not subject to a public interest test.

With regards to the issue of whistleblowing by Monitor staff, you may be interested to know that Monitor has not received any protected disclosures under PIDA from its own staff.

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 Notice

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,

A handwritten signature in black ink, appearing to read 'Fiona Knight', written in a cursive style.

Fiona Knight

Executive Director of Organisational Transformation