

19 July 2016  
[REDACTED]

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**  
[REDACTED]

Dear [REDACTED]

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

I refer to your request of 12 June 2016 under the FOI Act, which you clarified on 25 and 29 June 2016. As explained in the letter of 24 June 2016, references to NHS Improvement mean Monitor.

**Your request**

You made the following request:

- "1. Between January 1, 2014 and August 3, 2015, what monthly salary was paid to the interim improvements director at Monitor?"*
- "2. In relation to question 1, how was this paid (for example, directly to the person in this role in a monthly salary, to an agency etc?)"*

You provided the following clarification on 25 June 2016:

*"To clarify, I want to know Mark Davies' monthly salary when he was improvement director at Colchester Hospital University NHS Foundation Trust between January and August 2015."*

And the following on 29 June 2016:

*"On further consideration, it would make sense to request his salaries for the three roles and between the time period of January 2014 to August 2015."*

**Decision**

NHS Improvement holds the information that you have requested and has decided to withhold some of this information under sections 40 and 43 of the FOI Act, as explained in detail below.

As you are aware, Mr Davies was appointed as Improvement Director at the following foundation trusts during the period January 2014 to August 2015:

- Colchester Hospital University NHS Foundation Trust, January 2014 - August 2015
- Medway NHS Foundation Trust, August 2014 – August 2015
- Heatherwood and Wexham Park Hospitals NHS Foundation Trust, February 2014 – October 2014

The following information relates to these three roles.

#### Question 1

The engagement of Mr Davies as Improvement Director did not feature a regular monthly payment. The amount paid to Mr Davies was determined on the basis of the number of days required and daily rates agreed for provision of the services. The rates were agreed following a process of negotiation; our requirements, in terms of when the services were needed at each trust, were agreed on an on-going basis to meet the individual requirements of each of the trusts concerned.

In response to the first part of your request, we have decided not to release details of the payments received by Mr Davies for his services as Improvement Director, based on the daily rates agreed and the amount of days worked in each month, for the reasons outlined below.

However, we acknowledge that there is a legitimate public interest in knowing how public money is apportioned across an organisation and that there is a particular public interest in the cost incurred for the roles carried out by Mr Davies given the seriousness of the issues at the providers concerned. Furthermore, Mr Davies has consented to the release of information about the costs incurred for his services. We are therefore releasing the total figure paid for the services of Mr Davies during the time period January 2014 to August 2015 in his role as Improvement Director at the three above named trusts, which is £519,240 including VAT. The figure includes agency fees charged for administering payments and timesheets etc.

#### Question 2

In relation to the second part of your request, we have decided to release this information. The services of Mr Davies were paid for by Monitor to the recruitment agency Michael Page, complying in full with Department of Health guidelines on off-payroll payments. The arrangements were approved by the Department of Health. As explained above, the overall figure provided, which is £519,240 including VAT, includes agency fees, such as the amount charged by Michael Page for administering payments and processing timesheets.

#### Section 40 – personal data

I consider that revealing the precise details of the individual payments received by Mark Davies for his role as Improvement Director is exempt from disclosure under sections 40(2) and 40(3)(a) of the FOI Act on the grounds that this information contains personal data and that the first condition under section 40(3)(a) is satisfied, namely that disclosure would amount to a breach of the first data protection principle (personal data shall be processed fairly and lawfully) and its release is likely to cause damage or distress. This is an absolute

exemption and consideration of the public interest test is not required. In line with our responsibilities under the Data Protection Act 1998, we do not publish details of the individual remuneration of our staff below executive director level. This is because salary information relates to people's personal financial circumstances and disclosure could have a detrimental impact on them. Although not a salaried employee of NHS Improvement, as an individual engaged in providing services below executive director level on behalf of NHS Improvement, Mr Davies has a reasonable expectation that this detailed information about his individual financial circumstances would not be released. To release this information is likely to cause damage to any on-going and future negotiations by Mr Davies and he is likely to suffer distress as a result of its release.

NHS Improvement accepts that there is a legitimate public interest in knowing how public money is spent, which includes information about the cost of special measures, including the amount expended on improvement directors. In recognition of this and the need for transparency of public authorities, we have provided the total amount paid for Mr Davies' services and (in conjunction with the Care Quality Commission) we published a report in August 2014 about action taken under the special measures regime, which we provided a link to in our response of 24 June 2016 (reproduced [here](#) for reference). However, we do not consider that this legitimate public interest is met by disclosing remuneration information in depth, which (if combined with other information) could allow the public to ascertain the daily remuneration of individual improvement directors.

#### Section 43 – commercial interests

I consider that information on payments received by Mark Davies for his services as Improvement Director, broken down by month, is exempt from disclosure under section 43(2) of the FOI Act on the basis that it would, or would be likely to, prejudice the commercial interests of any person. This is because its release is likely to be prejudicial to NHS Improvement's and Mr Davies' commercial interests.

The role of improvement director was introduced as part of the new special measures regime in the autumn of 2013. Improvement directors were recruited on an individual basis as and when the need arose. The improvement director roles are different for each provider and depend upon the specific issues faced by it. As a result, each role requires different types of experience and levels of operation within the sector and the rates applicable for each role are individually negotiated. If we were to release the amount paid for the services of Mr Davies per month, individuals seeking to negotiate contracts with NHS Improvement for an improvement director position or other appointments could use the information to strengthen their own bargaining position when negotiating for, or providing services to, NHS Improvement. Also, it is likely that its release may prejudice the interests of Mr Davies in any on-going or future commercial negotiations.

#### *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.

I am content that the information above, detailing the total sum paid to Mr Davies, satisfies the public interest in transparency. This is in addition to the information NHS Improvement proactively publishes on the special measures programme.

### **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.

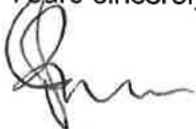
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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 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,



**Phil Groves**

Director of Media Relations