

Section 36 – effective conduct of public affairs

NHS Improvement has decided to withhold the information on the basis that it falls within sections 36(2)(b)(i) and 36(2)(b) (ii) of the FOI Act (prejudice to the conduct of public affairs).

The exemption is engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information now would be likely to inhibit the free and frank provision of advice and the exchange of views for the purposes of deliberation.

Background relevant to the explanation below on both sections 36(2)(b)(i) and (ii)

The information was provided by trusts, in response to a request from NHS Improvement at an early stage of the development of Sustainability and Transformation Plans (STPs), when the evidence base and data quality were limited. There was and to an extent remains much work to do, following on from the preliminary and emerging thinking represented in the notes. There are commercial sensitivities in some of the information in the notes. In addition, the relevant information from the notes, and further thinking on the matters covered by the notes, will form part of the published STPs and the wider engagement around them.

(1) Disclosure would discourage the free and frank exchange of views:

The notes provided by trusts in response to NHS Improvement's letter were provided early on in the STP process, to enable NHS Improvement to engage with STP areas to help identify the level of support needed in developing plans and timescales for delivery. As such, the notes contain free and frank views on emerging thinking on sensitive matters such as potential consolidation options and emerging risks and barriers.

There is a real risk that publishing all or any of the information now separately to any future publication of some or all of the information as considered relevant within the STPs and associated publications, would inhibit trusts and NHS Improvement from expressing themselves freely and frankly when deliberating on options and plans in these important and sensitive areas, and reduce the candour of future discussions. This would reduce the quality of the discussions, which are designed to inform policy and operational development in the NHS and harm future such development. In particular, the thinking and the overall STP process is likely to be detrimentally impacted by the disclosure now of this information, for example, trusts and the sector generally could become more reluctant to share early thinking at a stage when NHS Improvement could most beneficially engage.

(2) Disclosure would discourage the free and frank provision of advice:

The notes provided by trusts in response to NHS Improvement's letter were provided early on in the process to help NHS Improvement engage with STPs to help identify the level of support needed in developing plans and timescales for delivery.

The notes form part of discussions and provision of advice from and to trusts and NHS Improvement about matters relating to NHS Improvement's oversight of trusts and in this instance in particular about matters relating to the development of effective STPs.

The bodies involved rely on a relationship of trust and confidence when providing information and advice. Disclosure of these notes at this stage would be likely to discourage the free and frank provision of advice from and to trusts at an early stage when NHS Improvement could most beneficially engage. This could have a detrimental impact on the ability of NHS Improvement to develop appropriate policy options and to provide effective and co-ordinated support and oversight of trusts.

Public interest

We recognise the general public interest in openness and transparency, and the public interest in understanding the plans of NHS providers relating to how services are to be provided and accessed, in particular where they may be considered unsustainable in their current form. From that perspective, we would note that we publish a significant amount of information on the STP process, some of which can be accessed [here](#). But as indicated above, the information requested here was provided by trusts at an early stage of the thinking and planning process when the evidence base and data quality were limited. There was and to an extent remains much work to do, following on from the preliminary and emerging thinking represented in the notes. Publishing all or part of the information now as requested would, as described above, be likely to inhibit the free and frank provision of advice and the exchange of views for the purposes of deliberation. In addition, the relevant information from the notes and from further thinking in the matters covered by the notes will form part of the published STPs and the wider engagement around them. It is appropriate for NHS Improvement and the STP organisations to have a reasonable period of time to consider the precise form of communication and engagement of the information to be disclosed in this way. Premature publication of any of this information would disrupt arrangements for reviewing the plans and for considering the appropriate arrangements for communication and engagement as part of the wider STP exercise. Our conclusion is that the balance of public interest lies in withholding this information.

Section 22 - future publication

Section 22 provides an exemption where information is held by a public authority with a view to future publication, if it is reasonable to withhold the information from disclosure until the date of publication. Although these specific notes concerned may themselves not be published, the information (or if not at least part the information) contained in them is intended for future publication. The notes relate to the organisations' plans for the consolidation of back office, pathology and unsustainable services. The services concerned and the plans for those services will be included in the publication of the STP for each area once finalised. The STP plans are to be published shortly, although the precise form in which the consolidation plans are to be included in the overall STP plans remains under consideration. The proposals for communication and implementation require further consideration before publication. It would be premature to release the information before such consideration and discussion, and it may be confusing or misleading to have the information published separately from the wider STP package. In the circumstances, our view is that it is reasonable to withhold it.

Public interest

The exemption is subject to a public interest test. We recognise the general public interest in openness and transparency, and the public interest in understanding the plans of NHS providers relating to how services are to be provided and accessed, in particular where they may be considered unsustainable in their current form. But the public interest will be met by the publication of this information (or at least a part of it) in the coming months. In addition, it is appropriate for NHS Improvement and the STP organisations to have a reasonable period of time to consider the precise form of communication and engagement of the information to be published. Premature publication would disrupt arrangements for reviewing the plans and for considering the appropriate arrangements for communication and engagement as part of the wider STP exercise. Finally, as indicated above, we publish a significant amount of information on the STP process. Our conclusion is that the balance of public interest lies in withholding this information and keeping to our proposed timetable for publication.

Review rights

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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 'N. Ville', with a large, sweeping underline stroke below it.

Nick Ville
Project Director, Policy