

25 October 2016

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

Dear ██████████

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

I refer to your email of 27 September 2016 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (NHS TDA) are operating as an integrated organisation known as NHS Improvement.

**Your request**

You made the following request:

Can I see copies of the the following research reports please:

- Tariff Leakage Qualitative Research
- Research into Providers Decision Making
- Research to evaluate the delivery of expected patient benefits from past NHS mergers

**Decision**

NHS Improvement holds the information that you have requested. NHS Improvement has decided to release the the first two reports, with redactions as explained below.

NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemptions in sections 21, 40 and 41 of the FOI Act as explained in detail below.

**Section 21 – Information accessible to applicant by other means**

Section 21(1) of the FOI Act provides that information is exempt if it is reasonably accessible to the applicant by other means. NHS Improvement has published the report relating to the patient benefits of NHS mergers. In order to assist you, the link is provided below:

<https://improvement.nhs.uk/resources/how-make-nhs-mergers-work-better-patients/>

The 'Tariff Leakage Qualitative Research' report and 'Research into Provider Decision Making' reports are attached, subject to redactions on the basis of the exemptions below.

#### Section 40 – Personal data

I consider that some of the information in the 'Research into Providers Decision Making' report is exempt from disclosure under section 40(2) and 40(3)(a) of the FOI Act on the grounds that it 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). This is an absolute exemption and consideration of the public interest test is not required.

The information withheld is names of the CRD staff that worked on and produced the report. The staff would have a reasonable expectation that their names would not be published with the report.

Please note that the report we hold is only a 'highlights' report as the original intention was to publish the findings alongside a report produced by NHS Improvement. However, this project was not completed and therefore no further report was produced.

#### Section 41 – Information provided in confidence

I consider that some of the information in the 'Tariff Leakage Qualitative Report' is exempt from disclosure under section 41 of the FOI Act on the ground that the information was provided in confidence. This exemption applies in relation to the redacted parts of the report and Appendix B, which has been withheld in full. Section 41 provides an exemption for information which was obtained by NHS Improvement from any other person, if its disclosure to the public by NHS Improvement would constitute a breach of confidence actionable by any person. A breach of confidence will be actionable if a legal person is able to bring an action for the breach of confidence to court and the action is likely to succeed.

The information given by providers and commissioners was provided in circumstances giving rise to an obligation of confidence. The interviewees from those organisations provided information on the understanding they would remain anonymous and that information relation to identifiable individual organisations would not be disclosed. The report was prepared for internal consideration by Monitor and not for wider public disclosure. Disclosing the information to the public without consent would amount to an unauthorised use of the information. Disclosing to the public would be a breach of confidence, actionable by the providers and commissioners concerned. Providers and commissioners would also be less likely to participate in future research projects for NHS Improvement.

Section 41 is an absolute exemption and does not require the application of the public interest test under section 2(2) of the FOI Act. However, in considering whether (in an action for breach of confidence) a confidence should be upheld, a court will have regard to whether the public interest lies in favour of disclosure. Where a duty of confidence exists, there is a strong public interest in favour of maintaining that confidence. In the present circumstances,

NHS Improvement does not consider that there is a strong public interest in disregarding the duty of confidence owed to providers and commissioners.

### **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, appearing to be 'CW', with a long horizontal stroke extending to the right.

**Chris Walters**  
Chief Economist