

17 March 2017

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**By email**

Dear [REDACTED]

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

I refer to your email of 17 February in which you requested information under the FOI Act from Monitor/NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor.

### **Your request**

You made the following request:

*“Please can you provide for me under the FOI all correspondence between Monitor/NHS Improvement and South East Coast Ambulance Foundation trust with regard to:*

- ? *Allegations of bullying by executives*
- ? *Allegations of bullying at Coxheath EOC*
- ? *The "Red 3 protocols" introduced by Secamb*

*In addition, please provide all correspondence between:*

- ? *Monitor/NHS Improvement and Paul Sutton, from Secamb (and now, at PHE)*
- ? *Monitor/NHS Improvement and Geraint Davies, from Secamb”*

### **Decision**

We have not been able to progress your request, because to do so would exceed the cost limit under section 12 of the FOI Act.

#### *Cost Limit under section 12 of the FOI Act*

Under section 12(1) of the FOI Act, NHS Improvement is not required to comply with any request that potentially exceeds the relevant cost limit. The relevant cost limit is £450, which is set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This equates to a period of approximately eighteen hours in which to locate, retrieve and extract the information that you have requested.

In NHS Improvement's view, compliance with your request will exceed this limit because of the following two key reasons:

1. The scope of the request is very broad:

- The categories of information requested are extremely broadly worded and would mean that we would have to review a significant amount of the documentation held to locate it.
- The scope of your request is not restricted to a specific time period and is therefore unlimited.

2. The volume of documents that would need to be reviewed to locate the information covered by the request is significant:

- In October 2015 and March and November 2016 we took enforcement action against South East Coast Ambulance Service NHS Foundation Trust ("the Trust") including enforcement undertakings relating to the "Red 3 Pilot". We have been closely monitoring the Trust's performance against these requirements, which has generated a large volume of correspondence and documentation.
- There have been a significant number of individuals, from different teams within NHS Improvement, involved in supporting the Trust to improve its performance and address the issues raised by the "Red 3 Pilot". We would therefore need to search the records of a large number of individuals to identify the information requested.

Please note that NHS Improvement does not need to provide information in a number of circumstances, including the circumstances set out below, which are relevant to your request.

**Section 31(1)(g) exemption – law enforcement**

NHS Improvement does not need to provide information if disclosure of that information would, or would be likely to, prejudice the exercise by NHS Improvement of its functions for the purpose of ascertaining whether:

- a person has failed to comply with the law, or
- circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise.

The disclosure of sensitive and confidential information provided voluntarily to NHS Improvement by the bodies that we regulate and /or third parties may be prejudicial to the exercise of our functions. This is because it would make providers and third party less willing to share sensitive information with us which would reduce the amount and quality of information that they are prepared to voluntarily provide in the future. This may prejudice the exercise of our regulatory functions and the information may therefore be exempt from release under the FOI Act.

## **Section 40 exemption – personal information**

NHS Improvement does not need to provide information if that information constitutes personal information under the Data Protection Act 1998 and disclosure of it would contravene any of the data protection principles. This would be relevant to allegations made against specified individuals where they would have a reasonable expectation that the information would not be released (for example, where they had not consented to release of the information and the allegations had not been fully investigated).

### *Advice and Assistance provided under section 16 of the FOI Act*

Under section 16 of the FOI Act, NHS Improvement is required, as a public authority, to provide advice and assistance so far as is reasonable, to individuals who have made a request to it under the FOI Act.

Given NHS Improvement's indication above of the volume of documentation that would need to be reviewed to locate the information sought, NHS Improvement would provide the following indications to assist you to make a request that can be complied without the time limits in section 12 becoming applicable. You may wish to:

- narrow the scope of your request to describe more precisely the kind of information sought;
- specify time periods for which you seek information;
- limit your request to certain employees/groups of employees at NHS Improvement; and/or
- consider the types of information that may be excluded from release under the FOI Act.

It may assist you to know that NHS Improvement does publish details of all of its regulatory action against foundation trusts in the foundation trust directory, available on our website: click [here](#). We also publish information about the segmentation of providers, in accordance with our Single Oversight Framework. Further information about this is also available on our website: click [here](#).

Please note that foundation trusts are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act.

## **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).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Bennett', with a stylized flourish at the end.

**Paul Bennett**

Delivery and Improvement Director