

8 February 2018

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

Dear ██████████

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

I refer to your email of 12 January 2018 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

### **Your request**

You made the following request (numbering inserted by NHS Improvement for reference):

*“I wish to make the following FOI request;*

*Summary: NHS bank spend year to date*

*Please provide:*

- 1. One by doctors, one by nurses.*
- 2. Overall Bank spend year to date, broken down quarterly.*
- 3. Overall Bank spend itemised by Trust.*
- 4. Itemised by pay rate and individual worker/band/grade.*
- 5. The five highest bank pay rates, by Trust.*
- 6. The number of individual workers now working for bank in comparison to 2016.”*

### **Decision**

NHS Improvement holds some of the information that you have requested. We do not hold information for parts 1, 4 and 6 of your request.

We have decided to withhold items 2, 3 and 5 of your request on the basis of the applicability of sections 21, 22 and 43 of the FOI Act.

#### Section 21 – Information accessible to applicant via other means.

Section 21 provides an exemption from the right to know if the information requested is reasonably accessible to the applicant through other means. This is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.

We have published overall bank spend year to date, broken down by quarterly in our performance reports. Please refer to the following:

- [Quarter 1 2017/18 performance report](#), page 18
- [Quarter 2 2017/18 performance report](#), page 20

#### Section 22 – Information due for 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.

We confirm we hold the information for quarter 3 bank spend which will be published on our website in the coming weeks. Therefore the information you have requested falls within the scope of the exemption.

Section 22 of the FOI Act is a class based qualified exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

#### *Public Interest Test*

I consider the public interest in maintaining the exemption is greater than the public interest in disclosing the information. The public interest test will be met by future publication of this information and I consider it is reasonable to withhold this information and keep to our proposed timetable for publication.

#### Section 43 – Commercial interests

We confirm we hold information in relation to terms 3 and 5 of your request but consider it to be commercially sensitive to the trusts. Section 43(2) of the FOI Act provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

The information provided by trusts to NHS Improvement is financial which, by its nature, is commercially sensitive and disclosure of which would be likely to be detrimental to the trusts' legitimate commercial interests. Parties seeking to negotiate contracts with a provider could use the information relevant to your request to strengthen their own bargaining position

when negotiating for, or providing services to, that trust. In addition, competitors may be able to use such information to their advantage to the detriment of that trust's legitimate interests. We consider that the information relating to agency spend is commercially sensitive.

### *Public Interest Test*

Section 43 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemptions should be maintained. I have taken into account that there is a general public interest in promoting accountability and transparency by public authorities for decisions taken by them and in the spending of public money. However, I consider that disclosure of the withheld information into the public domain could endanger true and fair competition. I believe it is in the public interest for trusts to be able to attain best value for services using public funds. Therefore I conclude, the public interest in withholding this information is greater than the public interest in disclosure.

### **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,



**Martin Innes**

Senior Operational Agency Data and Intelligence Lead