

Interpretation of your request

'Workforce costs' has been interpreted as pay cost for permanent and temporary staff.

'Non-pay costs' directly correlates to terminology used in the corporate services data collection template.

'Total costs' has been interpreted as the sum of 'workforce costs' and 'non-pay costs'.

Information provided

We have provided the workforce costs and non-pay costs for the seven functions you requested in the attached MS Excel data file in an anonymised format (i.e. A1, A2, A3 and so forth). The data included is as per submissions by trusts on the corporate services data collection template. Where a trust has not submitted any data pertaining to your stated category e.g. 'Payroll, pay costs' then this has been marked on the data file as 'Trust did not submit this data', we have not interpreted the omission of data i.e. we have not determined whether this means that trusts have no spend to record against this field, or whether they have spend to record and either did not wish to disclose the information or were unable to specify it.

Information being withheld

Information relating to a small number of the largest and smallest trusts have been withheld as we consider that even if this were to be disclosed in an anonymised format, it would be possible to discern which trusts are being referred. We are withholding this information based on sections 41 and 43 of the FOI Act.

Section 41 – information provided in confidence

We consider that the withheld information is exempt under section 41 of the FOI Act. Section 41(1) provides that information is exempt if:

“(a) it was obtained by the public authority from any other person (including another public authority), and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

The test in section 41(1)(a) is met as the information was obtained by NHS Improvement by third parties, in this case providers. NHS Improvement has a data sharing agreement in place with trusts which enables it to receive this information and use it within the requirements set out in that agreement. Disclosure would result in NHS Improvement being in breach of the agreed terms of data collection.

The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. This means:

- (i) the information must have the necessary quality of confidence about it;
- (ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) disclosure must amount to an unauthorised use of the information to the detriment of the confider.

NHS Improvement considers that disclosure of the information would amount to an actionable breach of confidence for the reasons set out above.

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. Providers should be able to share information and concerns with NHS Improvement in the expectation that this will be kept confidential, and this is particularly important in relation to financial information which, if disclosed, may have negative consequences for providers. NHS Improvement considers that it is crucial for trust to be maintained by providers who impart information in such circumstances.

Section 43 – commercial interests

Section 43(2) provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

With respect to some untrimmed non-pay costs, we consider disclosure would enable third party providers to determine what their competitors are charging. Parties seeking to negotiate contracts with providers could use this information to strengthen their own bargaining position when negotiating for, or providing services to, that provider. In addition, competitors may be able to use such information to their advantage to the detriment of that provider's legitimate commercial interests.

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. We recognise that there is a public interest test in the activities conducted by public authorities. However, we have also considered the strong public interest in giving the NHS the ability to negotiate favourable prices when bidding for services. Overall we consider the public interest is best served by withholding the information requested.

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.

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,

Amy Lodge

Head of the Corporate Services Productivity Programme