

17 July 2018

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[REDACTED]
By email
[REDACTED]

Dear [REDACTED]

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

We refer to your email of 19 June 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:

“I would like to request the following information:

Between the period of February 2017 until 19th June 2018

- 1) Copies of letters, emails, and meeting/webinar minutes, please between Martin Inness (NHSI's Senior Operational Agency Data & Intelligence Lead) and companies in the Brookson's group (all group members please e.g. Brookson's Direct, Brookson's One, Brookson's Legal, Brooksons Medical Services LLP, etc).*
- 2) Copies of any emails specifically between [name redacted], Brookson's MD and Martin Inness*

Specifically please include any emails which are in the deleted messages box in your search as this information is still held.”

Decision

NHS Improvement holds the information that you have requested.

NHS Improvement has decided to release all of the information it holds, subject to the redaction of some personal and commercially sensitive information. The information is annexed to this letter. Please note, some of the information is exempt under sections 40 and 43 of the FOI Act.

Section 40 – Personal information

We consider that direct e-mail addresses, telephone numbers and other personal details are exempt from disclosure under section 40(2) of the FOI Act. This is on the grounds that they amounts to personal data and the first condition under section 40(3)(a)(i) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) as the individuals concerned would have a reasonable expectation that these particular items of personal information would not be disclosed into the public domain. Section 40 is an absolute exemption and consideration of the public interest test in disclosure is not required.

Section 43 – Commercial interests

Section 43 of the FOI Act provides an exemption for information, the disclosure of which would or would be likely to prejudice the commercial interests of any person (including the interests of a public authorities).

The Information Commissioner's relevant guidance states that:

“...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services”

We consider that the commercial interests of Brookson Direct would be likely to be prejudiced if we disclose their paper titled “managed services in the NHS” (pages 9 to 12 of the information annexed). This paper contains Brookson Directs' commercial expertise and knowledge which has been provided to NHS Improvement to support our work. Disclosure of the information requested could disadvantage Brookson Direct in competing for work against other providers and for any future tenders as the paper showcases their methodology and expertise which is unique to Brookson Direct.

As this is a qualified exemption we must consider whether the public interest in withholding the information outweighs the public interest in disclosing it.

We have taken into account the public interest in promoting accountability and transparency by public authorities for decisions taken by them and in the spending of public money. However, we have also considered the strong public interest in ensuring that the commercial interests of Brookson Direct are not prejudiced. Withholding the information protects the integrity of the commissioning arrangements. If commercially sensitive information is released, it will discourage providers from working with public bodies.

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 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,

NHS Improvement