

25 February 2016

██████████
By email ██████████

Dear ██████████

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

I refer to your email of 23 December 2015 in which you requested an internal review of Monitor’s decision of the same date. Monitor’s decision concerned your FOI Act request dated 23 November 2015. Your original request was as follows:

“Please would Monitor please provide a list of the proposed [special severance payment] settlements by Foundation Trusts that it has accepted for onwards submission to the Treasury for approval, in each of these periods:

- 1) financial year 2013-2014*
- 2) financial year 2014-2015*
- 3) the current financial year to date.*

Please provide the data by each of these three separate periods.

Please indicate the proposed amount to be paid for each settlement.

Please also indicate which of these cases included a whistleblowing element, as indicated by a claim to the employment tribunal on grounds of whistleblower detriment, and or disclosure made to employers or to Monitor, and or allegations of whistleblower reprisal.”.

Monitor’s Original Decision

Monitor’s original decision was as follows:

“Monitor holds some of the information you have requested. We hold a list of severance payment requests from NHS FTs for the current financial year 2015/2016 to date. We do not hold a list for the financial year 2014/2015 and the list we hold for 2013/2014 is incomplete. I have decided not to disclose the information held by Monitor...”.

At your request I have now conducted a review of that decision. I have decided that the original decision has been upheld, albeit on slightly different grounds.

Correction to Reasoning in the Original Decision

In undertaking this internal review I have identified an error in the original decision. The decision letter stated that *“We hold a list of severance payment requests from NHS FTs for the current financial year 2015/2016 to date”*. That statement is inaccurate: we do not hold a

“list” in that form for 2015/16 (or for 2013/2014, in respect of which it was suggested that we hold an incomplete list). We do of course hold the original requests but these have not been collated or aggregated in the manner suggested. I apologise for the error in this respect.

Information accessible by other means – section 21 of the FOI Act

I also note your comments in relation to the application of s.21 (information accessible by other means). I agree that s.21 has no application to the details of proposed payments. This information is not published and the exemption therefore has no application in this case. I place no further reliance on it.

Information provided in confidence – section 41 of the FOI Act

Having reviewed the information that Monitor holds, I have concluded that section 41 of the FOI Act (information provided in confidence) applies in respect of the information that Monitor holds for the financial year 2015/2016. My reasoning is the same as that set out in Monitor’s letter of 23 December 2015 which for the sake of brevity I will not repeat.

Personal Information – section 40(2) of the FOI Act

Having reviewed the information that Monitor holds, I have concluded that section 40(2) of the FOI Act (personal information) applies in respect of some of the information that you have requested. Again, my reasoning is the same as that set out in Monitor’s letter of 23 December 2015.

Costs of Compliance – section 12 of the FOI Act

Monitor’s original decision was that s.12 of the FOI Act (cost of compliance) applied to part 4 of your request (information concerning severance payments with a whistleblowing element). Having reviewed the information that Monitor holds I confirm that Monitor does not hold a consolidated list of severance payment requests at all. The creation of a list together with the collation of whistleblowing information would in my view significantly exceed the 18 hour rule under s.12 of the FOI Act. For that reason I have decided not to disclose the information on the basis of section 12 of the POI Act.

Monitor’s publication of severance payments relating to whistleblowing more generally

I note you have expressed concern about our approach to the internal collation of information we receive about severance payments, but these cases are considered on an individual foundation trust basis by our regulatory teams as part of our regular monitoring. I also note your desire that we publish information on severance payments relating to whistleblowing concerns. We will consider both these points as we move towards becoming NHS Improvement from 1 April 2016, and develop our new approach to supporting and regulating foundation and non-foundation NHS trusts. However, at this stage we are not in a position to make any commitment in this respect.

Review rights

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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,

A handwritten signature in blue ink, appearing to be 'J. Dorsett', written in a cursive style.

Jason Dorsett
Financial Reporting and Risk Director