

The Trust has redacted the names of various bodies on the basis that the details are commercially sensitive (for example, they disclose identities of contractors, or of parties to a dispute with the Trust). In relation to that information, we consider that the exemption in section 43 of the FOI Act applies on the basis that disclosure would be likely to harm the commercial interests of another person. Although we recognise the public interest in transparency and in ascertaining the details of the events at the Trust, we consider that this is already addressed by the information which is available publicly, including the substance of the largely unredacted PWC report and the fully published report of the independent “lessons learned” review published by Monitor on 28 January 2016 (“the lessons learned report”). The names of the bodies which have been redacted are not material to the substance of the issues considered and addressed in the review. On balance, we consider that the public interest in disclosure is outweighed by the public interest in maintaining the protection for commercial interests.

In addition, an annex to the report listing those individuals with whom PWC conducted meetings or conversations has been redacted. Monitor considers that this information is exempt from disclosure under section 40(2) of the FOI Act on grounds that it amounts to personal data and that the condition set out in section 40(3)(a)(i) is satisfied; namely that disclosure would amount to a breach of the data protection principles. The redacted information contains the names and roles of the individuals contacted by PWC during the review, who they would have a reasonable expectation that their identity would not be disclosed. Monitor does not consider that there is a legitimate public interest reason for disclosing this data. This is an absolute exemption and consideration of the public interest test is not required.

(2) Investigation reporting in May 2015

Monitor holds the information that you have requested. The investigation resulted in a briefing pack in May 2015. As you may know, Monitor has previously been asked to disclose this briefing pack but withheld the document on the basis of the exemptions in sections 31, 33 and 36 (see our decision letter of 13 November 2015 available at:

<https://www.gov.uk/government/publications/foi-st-georges-university-nhs-foundation-trust-financial-position-and-correspondence>

Monitor has given further consideration to disclosure in the light of events since the letter, but remains of the view that the information should be withheld on the basis of those exemptions, subject to the following points.

It should be noted that the briefing pack was made available to PWC as part of its forensic review.

To the extent that any information in the briefing pack has now been placed in the public domain, by inclusion in either the lessons learned report or PWC report, that information is now reasonably accessible to you by other means and therefore exempt under section 21 of the FOI Act.

To the extent that the information consists of financial information gathered from the trust for the purposes of Monitor's regulatory and audit-related functions, but which has not been published, we remain of the view that disclosure would prejudice Monitor's functions, in particular because of the harm to its relationship with the trusts it regulates, the impact on the willingness of those trusts to provide information to Monitor on an open basis, and the likelihood that this would lead to less detail information being provided, with the resulting detrimental impact on the effective exercise of Monitor's regulatory functions. The exemptions under sections 31 and 33 continue to apply to such information.

In addition to financial information, the briefing pack contains views and advice for senior executives at Monitor, to enable them to make decisions about how to respond to the situation at the trust. As set out in the letter of 13 November 2015, it was the opinion of Monitor's qualified person that disclosure would inhibit the free and frank provision of advice, and the free and frank exchange of views for the purposes of deliberation – in particular because disclosure would reduce the candour and openness with which such views and advice would be expressed in similar cases in future. That opinion remains applicable and the exemption under section 36(2) continues to apply.

Public interest

In relation to the public interest test applicable to the exemptions under sections 31, 33 and 36, we have considered the factors set out in the letter of 13 November 2015. In addition, we now note that a substantial amount of information about the authorisation of the Trust, the subsequent deterioration in its financial position, the reasons for the deterioration and the lessons to be learned has now been placed in the public domain, in the shape of the lessons learned report and the PWC report. The information which has been made available addresses the public interest in transparency in the activities of the public bodies concerned and in understanding why an NHS foundation trust suffered a serious financial deterioration so soon after authorisation. In the circumstances, Monitor remains of the view that the public interest in disclosure is outweighed by the need to maintain the exemptions.

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 Monitor of the issue or the decision. A senior member of Monitor'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 conducted by Monitor, 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, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to foi@monitor.gov.uk.

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 read 'V. Woodhatch', with a horizontal line underneath.

Victoria Woodhatch
Deputy Regional Director
Provider Regulation