

1 August 2016

Wellington House  
133-155 Waterloo Road  
London SE1 8UG

T: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

By email

Dear [REDACTED]

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

I refer to your email of 8 July 2016 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (NHS TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and NHS TDA.

### **Your request**

You made the following request:

*These are the questions that I am trying to get a response to, regarding the financial improvement programmes.*

*I've previously found your press release here: <https://improvement.nhs.uk/news-alerts/fip-helping-save-nhs-tens-millions-pounds/>*

*Which lists the following trusts as having been selected to receive help:*

- *Barnet, Enfield, and Haringey Mental Health NHS Trust*
- *Bedford Hospital NHS Trust*
- *Brighton and Sussex University Hospitals NHS Trust*
- *Central Manchester University Hospitals NHS Foundation Trust*
- *Doncaster and Bassetlaw Hospitals NHS Foundation Trust*
- *East Midlands Ambulance Service NHS Trust*
- *Imperial College Healthcare NHS Trust*
- *Maidstone And Tunbridge Wells NHS Trust*
- *Mid Yorkshire Hospitals NHS Trust*
- *Milton Keynes Hospital NHS Foundation Trust*
- *Norfolk and Norwich University Hospitals NHS Foundation Trust*

- *Royal Liverpool and Broadgreen University Hospitals NHS Trust*
- *Southend University Hospital NHS Foundation Trust*
- *Stockport NHS Foundation Trust*
- *Taunton and Somerset NHS Foundation Trust*
- *University Hospital of South Manchester NHS Foundation Trust*

- 1) *How were these trusts selected for inclusion on the programme?*
- 2) *Which trusts were not successful at getting on to the programme?*
- 3) *Which consultancies bid to work with the selected trusts?*
- 4) *When is the second wave of support going to be launched? How many trusts will be selected on this next wave?*
- 5) *What is the appetite for trusts to work with consultancies on the second wave?*
- 6) *Will there be a third wave? Fourth wave? How many do you foresee?*

## **Decision**

NHS Improvement holds some of the the information that you have requested.

NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemptions in sections 33 and 41 of the FOI Act as explained in detail below.

### **1) How were these trusts selected for inclusion on the programme?**

As set out in our [press release](#) the sixteen trusts were chosen on the basis of where NHS Improvement thinks intensive support will have the most impact.

### **2) Which trusts were not successful at getting on to the programme?**

NHS Improvement holds this information and has decided to withhold this information on the basis of section 33 of the FOI Act.

#### **Section 33 – Audit functions**

Sections 33(1)(b) and 33(2) of the FOI Act provide that information may be exempt from disclosure where disclosure would, or would be likely to, prejudice the exercise of any of the public authority's functions in relation to the examination, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

NHS Improvement has functions in relation to the examination of the economy, efficiency and effectiveness with which NHS foundation trusts and NHS trusts use their resources, which we consider would be likely to be prejudiced by the release of the information requested.

NHS Improvement's ability to discharge its functions in examining the economy, efficiency and effectiveness of the trusts it regulates would be prejudiced if sensitive and confidential

information were to be disclosed. We consider the information requested to be sensitive and confidential. The relationship between trusts and NHS Improvement, on which the effective performance of our functions depends, would be undermined if providers considered such information would be disclosed. Trusts may consider against volunteering in these types of programmes if there was a risk that information relating to their interest and the outcome would be disclosed.

#### *Public interest test*

We consider that there is a public interest in relation to transparency around providers that wished to participate in the Financial Improvement Programme. However, providers do not expect that such confidential information will be placed in the public domain and if they were to consider that NHS Improvement would disclose their interest in the programmes when they were not selected, they may be less likely to volunteer for such programmes. This in turn would prejudice the ability for NHS Improvement to assist trusts with tackling savings, or other similar initiatives.

NHS Improvement therefore considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **3) Which consultancies bid to work with the selected trusts?**

NHS Improvement holds this information and has decided to withhold the information on the basis of section 41 of the FOI Act. A competitive procurement exercise took place in order to select the consultancies.

#### Section 41 – Information provided in confidence

Section 41 provides an exemption for information which was obtained by NHS Improvement from any other person, if its disclosure to the public by NHS Improvement would constitute a breach of confidence actionable by any person. A breach of confidence will be actionable if a legal person is able to bring an action for the breach of confidence to court and the action is likely to succeed.

As part of the competitive procurement process, NHS Improvement received information from bidders which is not in the public domain. Some of the information submitted is confidential in nature, including the names of those who submitted bids. That information was provided in circumstances giving rise to an obligation of confidence, and disclosing the information to the public without consent would amount to an unauthorised use of the information. Disclosing to the public would be a breach of confidence, actionable by the bidders concerned.

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 the bidders.

**4) When is the second wave of support going to be launched? How many trusts will be selected on this next wave?**

NHS Improvement does not hold this information. This is still to be determined.

**5) What is the appetite for trusts to work with consultancies on the second wave?**

A number of trusts have expressed an interest in joining this programme if a second wave is confirmed.

**6) Will there be a third wave? Fourth wave? How many do you foresee?**

NHS Improvement does not hold this information. NHS Improvement has not yet made a decision on this.

**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.

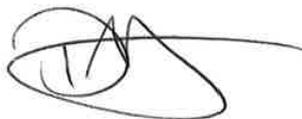
If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

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 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,



**David Hill**

Transformation & Turnaround Director