

24 March 2017

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By email
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Dear ██████████

Request for an Internal Review of a decision under the Freedom of Information Act 2000 (the “FOI Act”)

I refer to your email of 13 January 2017 in which you requested an internal review of Monitor’s decision of that same date. That decision concerned your request for certain “Winter Sit Rep” data for the period 1 to 4 December 2016. I apologise for the delay in replying.

Since 1 April 2016, Monitor and the NHS Trust Development Authority (“the TDA”) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and The TDA.

Your Request dated 13 December 2016

In your email dated 13 December 2016 you made the following request:

“Under the Freedom of Information Act, please could you provide me with the Winter Sit Reps data for December 1 2016 to December 4 2016 for the following items

- Ambulance handover delays of over 30 minutes*
- Urgent operations cancelled for the second or subsequent time in previous 24 hours*
- Urgent operations cancelled in previous 24 hours*
- Number of cancelled operations in previous 24 hours*
- Non-clinical critical care transfers*
- Delayed transfers of care*
- A&E performance including: Total number of patients who have a total time in A&E over 4 hours from arrival to admission, transfer or discharge*

broken down for each hospital trust that has been required to provide this information.”

Monitor's Original Decision

Monitor decided to withhold the information requested on the basis of the application of the exemption in section 21 of the FOI Act, on the basis that the information was intended for future publication.

Your request for an internal review dated 1 March 2016

In your email dated 13 January 2017 you made a number of points. In summary:

(1) It is not clear and no evidence has been provided that NHSI's report would contain all of the information requested at the trust level detail.

(2) There is a massively overwhelming public interest in the information being made available immediately.

Internal Review - Decision

I have now conducted a review of the original decision. I have decided that it should be upheld and that the information should not be disclosed for the following reasons.

I have reviewed the available material and I am satisfied that at the time of your request, NHS Improvement intended to publish the information requested at a future date. I note that for the exemption to apply, it is sufficient that there was a settled intention to publish, albeit the precise form and date of publication had yet to be established.

As explained in our original decision letter, NHS Improvement intends to publish this data as part of a report on winter performance across the sector. This will follow analysis and interpretation of the data, as part of a comprehensive review of winter performance. We intend the report to include details of trends and commentary on lessons learnt. Providing this will ensure the data is in context and is fully understood. I am satisfied that in these circumstances, it is reasonable to withhold the information pending publication.

Section 22 of the FOI Act was therefore correctly applied and continues to be an appropriate basis for withholding the information.

Public interest test

In relation to the public interest in disclosure, in addition to the factors identified in the original decision letter, I have also considered the specific points that you make in your email of 13 January 2017. In response to those points:

(1) I agree there is a strong public interest in this information being published and in enabling public understanding of the performance of providers during a period involving a high level of pressure on A&E departments. I recognise that the performance of the NHS in England is under intense scrutiny.

(2) I do not agree that there is a massively overwhelming public interest in immediate publication, however. The public interest in disclosure must be weighed against the public interest in ensuring that the data is fully analysed, and is published alongside written commentary and analysis which enables the public and the NHS to properly interpret the data and understand the lessons to be learnt. In addition, as set out in the original decision, relevant performance data is already published by NHS Improvement and NHS England, including NHS Improvement's quarterly performance report – see:

<https://improvement.nhs.uk/resources/quarterly-performance-nhs-provider-sector-quarter-3-1617/>

(3) I recognise that publication of this data may assist the public to understand the pressures their local hospitals are facing. However, NHS Improvement considers that such understanding would be better facilitated and informed if accompanied by the analysis and commentary we propose. In addition, as already mentioned, the public's understanding already benefits from the performance data that has been published for this period.

I have concluded that, as in the original decision, the public interest in maintaining the exemption outweighs the public interest in disclosure.

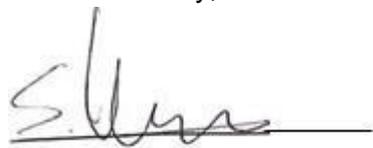
Complaint rights

If you are dissatisfied with the outcome of the 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.

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 black ink, appearing to read 'S. Rogers', is written over a horizontal line.

Simon Rogers
Legal Director