

3 April 2017

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██████████
By email
████████████████████

Dear ██████████

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

I refer to your email of 8 March 2017 in which you requested an internal review of NHS Improvement’s decision in relation to your request under the FOI Act dated 14 February 2017. For the purposes of this letter, NHS Improvement means the NHS Trust Development Authority (“NHS TDA”).

For the reasons outlined below, I have decided to uphold NHS Improvement’s decision to not release the requested information pursuant to sections 31 and 40 of the FOI Act.

Your original FOI request

You requested a copy of the leadership review (the “Review”) of Princess Alexandra Hospital NHS Trust (the “Trust”), work awarded to Deloitte in 2016.

On 8 March 2017, NHS Improvement decided to withhold the information requested pursuant to sections 31 and 40 of the FOI Act (the “decision letter”).

Your internal review request

On 8 March 2017, you requested a review of NHS Improvement’s decision on the basis that you believe that the exemptions cited above do not apply. You have noted that the Trust is already in special measures and that even if a redacted version of the report was disclosed, this would not mean that NHS Improvement would be unable to take action. In relation to information provided in confidence, you have stated that you believe that the public interest in “*arguably the country’s worst performing trust*” outweighs this.

Decision

I have reviewed the decision and I have decided to uphold it on the basis of the applicability of the exemptions at section 31(1)(g) and 40 of the FOI Act.

Section 31 – law enforcement

In the decision letter, Ms Nair relied on the exemption in section 31(1)(g) of the FOI Act in deciding not to disclose the requested information as she considered that disclosure of the information would be likely to prejudice the exercise by NHS Improvement of its functions. In forming this view, Ms Nair relied on the purpose in section 31(2)(c), that is:

“The purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise.”

I agree with Ms Nair’s view.

As noted in the decision letter, Section 5 of The National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016 provides that NHS Improvement must exercise its functions with the objective of ensuring that English NHS trusts are able to comply with their duty under section 26 of the NHS Act 2006. Section 26 sets out the general duty of NHS trusts to exercise their functions efficiently, economically and effectively – by, for example, establishing and maintaining best practice corporate governance arrangements and financial management standards, and effectively implementing systems and processes.

The Trust has been put into “special measures” as a result of the Care Quality Commission’s (CQC) rating the Trust as inadequate. As part of that process, NHS Improvement commissioned the Review and the Trust has agreed to address its findings and to provide assurance to NHS Improvement that it has done so.

Clearly the leadership of the Trust affects whether NHS Trusts are exercising their functions in accordance with section 26 of the NHS Act 2006 and a review of the leadership of an NHS Trust will form an important part of the evidence on which NHS Improvement will base its regulatory decisions. Whilst the Trust is currently in special measures, the team at NHS Improvement is still using the Review to consider what, if any, further actions may be needed in the future. You consider that disclosing the Review would not prevent NHS Improvement from taking action, however I consider that it would be likely to prejudice the exercise by NHS Improvement of its functions.

Public interest

I also agree with Ms Nair’s findings and that the public interest lies in favour of maintaining the exemption.

The public interest in accountability and transparency by making access to the information available has been weighed against the detrimental impact that is likely to ensue if disclosure is permitted. The Trust has published the CQC’s findings and the Trust’s Quality Improvement Plan on its web site¹. NHS Improvement considers that this information is sufficient to meet the public interest in transparency.

There is also a public interest in NHS Improvement’s continued monitoring and assessment of the Trust and whether or not it has addressed the findings of the Review. NHS Improvement has concluded that the need to avoid adversely affecting its continued

¹ <https://www.pah.nhs.uk/article/381/Quality-Improvement-Plan>

monitoring and assessment of the Trust outweighs the public interest in disclosure of the information that is being withheld.

Section 41 – information provided in confidence

I agree with Ms Nair's view that the Review falls within the exemption at section 41 of the Act for the reasons stated in the decision letter. In your email of 8 March 2017, you have stated that the public interest outweighs the provision of the information in confidence. Whilst section 41 is an absolute exemption and does not require the application of the public interest, I have considered the inherent public interest in the context of the common law duty of confidence. That being the case, there is a strong public interest in favour of maintaining the principle of confidentiality and I do not consider that the public interest in disclosure outweighs or overrides the duty of confidence owed to the Trust and Deloitte.

Review rights

If you consider that this internal review is unsatisfactory, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted on 0303 123 1113 or 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 (eg 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



Jayne Rhodes

Senior Oversight and Regulation Lead – Midlands and East