

Dear Mr Alexander,

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

We refer to your email of 3 March 2018 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the TDA.

Your request

You made the following request:

1. “Please advise how many of the panellists selected for the NHS Improvement whistleblower employment support scheme have been asked to sign a confidentiality agreement which contains this requirement:

“I hereby acknowledge that I am subject to a duty of confidentiality with respect to this activity (and any other associated work I undertake for NHS Improvement), and undertake not to disclose, otherwise than with the consent of NHS Improvement or in the proper discharge of my duties within the office of NHS Improvement, confidential information to which I have had access or information which has been communicated to me in confidence within the office of NHS Improvement or received in confidence from others.

I further acknowledge that this duty of confidentiality does not cease on any termination of the provision by me of services to NHS Improvement.”

Please advise if this confidentiality clause is standard for all NHS Improvement workers.

If not, please advise if besides application to panellists for the whistleblower employment support scheme, NHSI has required any other specific groups of workers to agree to this clause. If so, please give details.

2. Please advise how many of the panellists selected for the NHS Improvement whistleblower employment support scheme have been asked to sign a confidentiality agreement which contains this requirement:

“I will not speak to the press regarding any activity undertaken at NHS Improvement without prior consent from the Executive Director of Strategic Communications and/or the Director of Media Relations. I understand that any press enquiries (telephone or email) should be forwarded immediately upon receipt to the Media Relations Director or the Media Relations Managers and that I should not respond to them under any circumstances, except where there has been explicit prior agreement from the Media Relations team.”

Please advise if this clause about contact with the press is standard for all NHS Improvement workers.

If not, please advise if besides application to panellists for the whistleblower employment support scheme, NHSI has required any other specific groups of workers to agree to this clause. If so, please give details.

3. Please provide copies of the NHS Improvement policies to which this clause refers:

“I understand that NHS Improvement has strict rules about breaches of confidentiality and my attention has been drawn to the office rules and policies of NHS Improvement on the intranet with respect to confidentiality, conflicts of interest and data protection including the ‘Information and Data Handling’ and ‘Procurement’ policies (which have been supplied with this undertaking).”

Decision

NHS Improvement holds the information that you have requested and has decided to release all of the information that it holds subject to the redaction of personal information.

Questions 1 and 2

All Panel members were asked to sign the confidentiality agreement before any information regarding applicants was shared with them.

We have taken 'worker' to mean employees, contractors, consultants, and agency workers engaged within NHS Improvement. All NHS Improvement employees have confidentiality clauses in their contracts of employment, which have similar wording to the standard confidentiality agreement. All contractors and consultants are required to sign the standard confidentiality agreement prior to, or upon, commencing their work with NHS Improvement.

Whether agency workers are required to sign the standard confidentiality agreement upon commencing work with NHS Improvement depends on their seniority and likelihood of exposure to confidential information.

Question 3

Information and Data Handling policy has been given to all Panel Members and a copy made available for reference during panel meetings.

We have attached copies of the "Information and Data Handling Policy" and "Procurement Policy". NHS Improvement considers that some information contained within the policies is exempt from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data and the first condition under section 40(3)(a)(i) is satisfied, namely, that disclosure would amount to a breach of the first data protection principle (personal data should be processed fairly and lawfully) as the individuals concerned would have a reasonable expectation that their information would not be disclosed into the public domain.

Section 40 is an absolute exemption and consideration of the public interest test in disclosure is not required.

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.

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,

NHS Improvement