

31 August 2018

Dr Frank Mortimer

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: nhsi.enquiries@nhs.net
W: improvement.nhs.uk

By email

request-492827-36e06fef@whatdotheyknow.com

Dear Dr Mortimer,

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

We refer to your email of 5 August 2018 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor/ the TDA.

Your request

You made the following request:

“1) please disclose as much documentation as you hold, or can reasonably obtain within the statutory time limit, held by NHS Improvement setting out your powers and their scope.

Could you please specifically disclose any documentation you hold on:

2) What competition powers you have precisely and their limits, extent, and statutory underpinning.

3) What pricing powers you have precisely and their limit, extent, and statutory underpinning.

4) Documents where you considered actions relating to competition or pricing powers but were unable to pursue them as the actions would have been out with your statutory powers/ultra vires.”

Decision

We have not been able to progress your request, because to do so would exceed the cost limit under section 12 of the FOI Act.

Cost Limit under section 12 of the FOI Act

Under section 12(1) of the FOI Act, NHS Improvement is not required to comply with any request that potentially exceeds the relevant cost limit. The relevant cost limit is £450, which is set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This equates to a period of approximately eighteen hours in which to locate, retrieve and extract the information that you have requested.

In NHS Improvement’s view, compliance with your request will exceed this limit because of the following two key reasons:

1. The scope of the request is very broad:

- The category of information is extremely broadly worded and would mean that we would have to review a significant amount of the documentation held to locate it.
- The scope of your request is not restricted to a specific time period and is therefore unlimited.

2. The volume of documents that would need to be reviewed to locate the information covered by the request is significant. To locate all discussions, meeting minutes, notes, emails and records in relation to our competition and pricing powers is likely to require a significant number of people to review thousands of documents to clarify whether the information falls in scope of your request.

Advice and Assistance provided under section 16 of the FOI Act

Under section 16 of the FOI Act, NHS Improvement is required, as a public authority, to provide advice and assistance so far as is reasonable, to individuals who have made a request to it under the FOI Act.

Given NHS Improvement's indication above of the volume of documentation that would need to be reviewed to locate the information sought, NHS Improvement would provide the following indications to assist you to make a request that can be complied without the time limits in section 12 becoming applicable. You may wish to:

- narrow the scope of your request to describe more precisely the kind of information sought; and/or
- specify time periods for which you seek information.

We would also like to direct you to some publicly available information in relation to points 1, 2 and 3 of your request.

(1) Generally, see the National Health Service Act 2006 and the Health and Social Care Act 2012 together with the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016, and the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016.

(2) Information on the broad scope and powers of NHS Improvement can be found on NHS Improvement's website here: <https://improvement.nhs.uk/about-us/who-we-are/>

(3) Guidance and information about NHS procurement, choice and competition for healthcare providers and commissioners can be found here: <https://www.gov.uk/government/collections/procurement-choice-and-competition-in-the-nhs-documents-and-guidance>

- (4) Details of the 2017/2019 national tariff are published here: <https://improvement.nhs.uk/news-alerts/201719-national-tariff-published/>. We also refer you to the Health and Social Care Act 2012 where Monitor's statutory pricing powers are set out.

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.

Yours sincerely,

NHS Improvement