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**Councillor John Illingworth**  
Leeds City Council

**SENT VIA EMAIL**

3 December 2013

Dear Councillor Illingworth

**Re: Children's Heart Surgery – Freedom of Information (FOI)**

I am writing further to your letter of 27 August 2013 regarding the release of material relating to the Safe and Sustainable review. It was my intention to reply to the points in your letter of 27 August 2013 at the same time as disclosing information. However because of the continuing delay in the provision of information, I am writing now to address the points you raised and to alert you to problems we have encountered in dealing with your request. I believe Bill McCarthy has also spoken to you about the FOI requests when you spoke on 29 October 2013.

Your letter was in response to mine of 21 August 2013, in which I set out how NHS England intended to respond to your request for information. Since you and I first met in July 2013, and discussed your FOI requests, the team responsible for Safe and Sustainable has entirely disbanded, and the NHS England FOI team has taken up responsibility for fulfilling the Safe and Sustainable FOI requests. Since then the FOI team has undertaken a review of the remaining work to be completed, as well as finalising the FOI work undertaken by Safe and Sustainable.

As outlined in my letter of 21 August 2013, NHS England under-estimated significantly the scale of the task required to fulfil your request, and misjudged our ability to provide this within the agreed 40 hours (which of course takes no account of many hours of work checking with individuals who are named, or considering and undertaking redaction (which I know you believe should “not be necessary”)). It is proving to be a laborious process which is quite far removed from the vision you describe of “skilfully designed queries [which] allow a large proportion of the relevant documents to be located in a single pass”.

As I said in my letter of 21 August 2013, we face practical obstacles due to the “duration of Safe and Sustainable (2008-2012), the range of organisations whose correspondence you wish to see, and the amount of change in the health system since 2008”.

As a result, there has been and continues to be a delay in providing you with this information. Please be assured we are continuing to progress this request with a view to providing a final response by the end of December 2013. The detail of what we have and have not been able to provide will be set out in that response, but I thought it would be helpful to set out here a response to the points in your letter of 27 August 2013.

Paragraph numbering is the same as in your letter:-

Paragraph 1) - This relates to your criticism of Safe and Sustainable and the National Specialised Commissioning Team (NSCT). I appreciate your frustration but there is nothing I can add to this which would assist the FOI request we are dealing with here.

Paragraphs 2) 3) and 4) - You refer to a separate FOI request that was handled by NHS England relating to requests from January, February and March 2013. I understand that this has since been investigated by the ICO. I am unable to comment further. The FOI team for NHS England handles all requests for information including those which are escalated to the Information Commissioner. My understanding is that following this decision by the Commissioner your next recourse is through the Information Tribunal.

Paragraph 3) - You suggest that NHS England obtains “e-discovery” software which could carry out searches to locate the information you are interested in obtaining. However NHS England does not have this technology already, and there is no intention to procure it. I am unable to comment further on the details of this specific request.

Paragraphs 5) and 6) - These paragraphs do not affect the FOI request under consideration.

Paragraph 7) - We will, to the best of our ability, provide electronic copies of information. I had previously said there would be a trade-off as I understood it would be quicker to process paper copies and therefore hard copy permitted more extensive disclosure. However, I am now informed that it is no more time-consuming to provide electronic copies instead.

Paragraphs 8) and 9) - These do not relate to the FOI in question.

Paragraph 10) – You requested a “forensic image of the server-side directories” of the NSCT website. The website was (and is) managed by an external contractor. We are not able to carry out the request in the way in which you have described.

Paragraph 11) – This does not relate to the FOI in question.

Paragraph 12) – This relates to a previous FOI request which was aggregated with a number of other requests you submitted. Please refer to my comments made under Paragraph 2), 3) and 4) which clarifies the position on this.

Paragraphs 13) to 16) – These relate to the number of individuals we are reviewing. My letter of 21 August 2013 proposed that in the interest of the most effective approach to disclosure, we would target our approach on official correspondence ranging from 2008 to 2012 between nine individuals in NSCT, and five other individuals or groups, which were - Sir David Nicholson, Sir Bruce Keogh, Royal Colleges of Medicine, Professional Societies and NHS Trusts involved in the review.

Your letter of 27 August 2013 disagreed with this approach and asked us to search for a larger set of individuals and groups. NHS England will not be undertaking any further search of the additional individuals you have named since to do so would be to broaden the terms of the initial request and would have significant resource implications for NHS England. And in any case, it will be impossible to do this within the 40 hours we have agreed to undertake. It has become clear to us that there are significant challenges in fulfilling the request relating to the nine individuals which will limit the disclosure we can ultimately make. We will endeavour to provide you with a representative sample of all of the relevant material but I do not believe it will be possible to do more than this within the 40 hours. I am not yet in a position to advise precisely how the disclosure is affected but this will be made clear in our final response and disclosure of material to you.

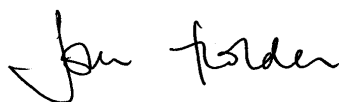
Paragraphs 17) to 18) – These relate to a previous FOI request you submitted to NHS England. This has since been responded to and subsequently reviewed at an Internal Review. As with earlier FOI requests, I am unable to comment further. If you are dissatisfied with the response to your Internal Review and material disclosed, you are able to raise this with the Information Commissioner directly.

Paragraph 19) – This refers to historic queries and FOI requests with NSCT and now NHS England. I have explained that these have been reviewed by the Information Commissioner.

Paragraph 20) – You have requested a complete non-redacted version of the most recent “Keogh” emails; as you know I passed your request on immediately to those responsible for the on-going review of patient safety at Leeds.

I hope this letter helps to clarify the position of NHS England in handling this request and our progress. We will endeavour to provide you with our final response by the end of December 2013.

Yours sincerely



**John Holden**  
**Director of System Policy**