

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2018

Public Authority: East London NHS Foundation Trust

Address: foirequest@elft.nhs.uk

Decision (including any steps ordered)

1. The complainant has requested the trust to disclose information relating to the specialist addiction unit (SAU) services it is contracted to provide to a number of London Boroughs. The trust provided some information but withheld the remainder, citing sections 12 and 43 of the FOIA.
2. The Commissioner is satisfied that section 12 of the FOIA applies in this case. However, she has decided that section 43 of the FOIA is not engaged.
3. The Commissioner requires the trust to take the following steps to ensure compliance with the legislation.
 - The trust should disclose the information to which section 43 of the FOIA has been applied to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 August 2016, the complainant wrote to the trust and requested information in the following terms:

"1. Confirmation that LB Hackney has commissioned specialist addictions services from ELFT since 1 April 2014.

2. Confirmation that LB Tower Hamlets has commissioned specialist addictions services from ELFT since 1 April 2013.
 3. The total amount that LB Tower Hamlets paid ELFT for non-mandated substance misuse services for the period 1 April 2013-31 March 2014 ("FY 13/14").
 4. Information explaining the basis for the reduction of £844,000 in the value of the CCG's contract, referred to in Appendix 1 to the 2013 Heads.
 5. Information relating to LB Hackney's contract management of the SAU during FY 13/14.
 6. All correspondence (whenever written) between ELFT and LB Hackney relating to the SAU during the period 1 April 2013 to date.
 7. All correspondence (whenever written) between ELFT and the Department for Health (including but not limited to the Department's Legacy Management Team) relating to the SAU during the period 1 April 2013 to date.
 8. All information held by ELFT that references any relationship between ELFT and LB Hackney with respect to the SAU during the period 1 April 2013 and 31 March 2014.
 9. The total amount charged by ELFT to LB Hackney for specialist addictions services during the period 1 April 2013 to 31 March 2014.
 10. Any agreement(s) (whether or not embodied in a formal contract) between ELFT and LB Hackney covering specialist addictions services for the period 1 April 2014 to date.
 11. Any agreement(s) between ELFT and LB Newham covering specialist addictions services for the period 1 April 2013 to 31 March 2014.
 12. Any agreement(s) between ELFT and LB Tower Hamlets covering specialist addictions services for the period 1 April 2013 and 31 March 2014.
 13. The total amount charged by ELFT to LB Newham for specialist addictions services during the period 1 April 2013 to 31 March 2014.
 14. The total amount charged by ELFT to LB Tower Hamlets for specialist addictions services during the period 1 April 2013 to 31 March 2014."
6. The trust responded on 5 October 2016. The trust provided a response to questions 1, 2 and 10. In relation to questions 3, 9, 11, 12 and 13 the trust applied section 43 of the FOIA. Regarding questions 4 and 5, it

applied section 21 and for questions 6 and 7 it relied upon section 12 of the FOIA. For question 8, the trust advised the complainant that it does not hold the requested information.

7. The complainant requested an internal review on 31 October 2016.
8. The trust carried out an internal review and notified the complainant of its findings on 30 January 2017. It explained in more detail why it had applied the exemptions cited and confirmed that it now wished to rely on section 21 for question 8 as well.

Scope of the case

9. The complainant contacted the Commissioner on 10 March 2017 to complain about the way her request for information had been handled. The complainant stated that she had received unsatisfactory responses to questions, disagreed with the application of section 21 and the trust's application of the public interest test.
10. During the Commissioner's investigation the complainant confirmed that she had no further complaint about the trust's handling of questions 1, 2 and 10 of the request. These questions did not therefore form part of the Commissioner's investigation.
11. The trust also withdrew its application of section 21 of the FOIA, accepting that this exemption could not apply to questions 4, 5 and 8 of the request. In relation to question 4, it disclosed the information. In relation to questions 5 and 8 it confirmed that it now wished to rely on section 12.
12. The trust also decided to disclose the requested information falling within the scope of question 3 to the complainant during the Commissioner's investigation. For questions 11 and 12, the trust decided to disclose a copy of the requested agreements to the complainant but with the value of each contract redacted under section 43 of the FOIA. For questions 9, 13 and 14 it continued to apply section 43 of the FOIA.
13. With regards to questions 6 and 7, the complainant confirmed that she had no interest in any patient information which may, on reflection, fall within the scope of these questions; only correspondence between the two parties relating to the SAU for the time period quoted. The Commissioner's analysis will therefore focus on the application of section 12 of the FOIA to all information falling within the scope of these questions with the exception of any patient information.

14. The remainder of this notice will therefore focus on:
 - (a) Questions 5, 6, 7 and 8 and the trust's application of section 12 of the FOIA.
 - (b) Questions 9, 11, 12, 13 and 14 and the trust's application of section 43 of the FOIA to the remaining withheld information.

Reasons for decision

Section 12 – cost limit

15. Section 12 of the FOIA states that a public authority is not obliged to comply with a request if it estimates that it would exceed the appropriate limit.
16. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No 3244. These are known as the 'Fees Regulations' for brevity. Regulation 3 of the Fees Regulations states that the appropriate limit is £450.00 or 18 hours at an hourly rate of £25.00.
17. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expect to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.

Questions 6 and 7

18. The trust explained that there is no central location for the extent of information falling within the scope of these questions. There is a central contracts database but this only contains the contracts themselves and does not contain any other supporting or relevant information for a number of reasons.
19. The trust explained further that the contracts database is large. If ancillary or supporting information was added to it, it would increase its complexity and make effective file management difficult. The

information is also regarded as sensitive and confidential. It cannot be added to the contracts database for security reasons. If it was numerous individuals would have access to information they are not entitled to see. It said that it does have structured filing systems across the trust but there is no centralised system. Individuals will therefore store their information individually on their local system.

20. The trust also confirmed that the issues surrounding the contracts and their management are wide ranging with different individuals being involved in different elements. Not everyone who has involvement in the issues surrounding these contracts and their management will be copied into all emails and all correspondence. So in order to comply with these questions the trust would have to look at the information held by each and every individual involved in the contracts and their management over the period specified in the request.
21. The trust confirmed that it would have to review the records of eleven individuals; five of which no longer work for the trust. These being:
 - Chief Executive (no longer employed)
 - Two Chief Finance Officers (one no longer employed, one currently employed)
 - Service Director
 - Service Manager
 - Clinical Director (no longer employed)
 - Executive Director of Commercial Development
 - Associate Director of Business Development
 - Executive Director of Corporate Planning
 - Chief Operating Officer (no longer employed)
 - Deputy Chief Executive (no longer employed)
22. Data is backed up on a daily, weekly and monthly basis. Due to the large volume of data and the lack of feasibility to back up everything all the time, the trust's IT function holds daily backups for two weeks and weekly backups for the month period before a final monthly backup is taken towards the end of the month. The final monthly backup is written with a non-overwriteable data format and sent off site for secure storage with a third party provider.

23. The trust stated that, in order to comply with these questions in full and accurately, it would have to retrieve the monthly backup tapes that have been archived for each individual listed above over a three year period and restore the data. There could be potentially 36 tapes for each individual, making an overall total of potentially 396 tapes. It admitted that there would be a lot of duplication restoring them all but it would be inaccurate to rely on the last backup tape for each individual or select a random number of backup tapes, as this may not identify all the recorded information held or locate any deleted correspondence. It would also not be possible to say with certainty that one or two individuals will hold all recorded information. The individuals listed have all had some involvement and it would be wrong to assume that certain individuals will have been copied into each and every piece of correspondence.
24. To assist the Commissioner, the trust carried out a sampling exercise for two of the individuals listed above to demonstrate that it would exceed the cost limit to comply with these questions.
25. The first being the Deputy Chief Executive. It retrieved one back up tape falling within the scope of these questions and confirmed that it took over 8 hours to locate the tape on the correct server, retrieve it from offsite storage, restore it, carry out keyword searches, restore emails identified, conduct further more refined searches of the restored emails and search their personal drive. This was broken down as follows:

Request, server search, tape provision and tape Restoration 120 minutes

(There are eight servers on which the information is held. It is not possible to know which server it will be upfront, as the server used varies with the location of the individual at the time, storage space and whether the individual worked across different locations.)

Keyword search: 20 minutes

- Department of Health
- Dept Health
- SAU (Specialist Addiction Services)
- Addictions
- Substance misuse
- Contracts

(This produced approximately 300 results picking up the search item in both file names and within the email/document, therefore necessitating access to each email to determine its relevance.)

Email restoration: 120 minutes

(Emails were archived necessitating individual restoration. Each took between 10 seconds and five minutes.)

Further searches: 120 minutes

(Individual emails restored proves most are not relevant (less than five emails). A manual search was therefore undertaken by scanning subject headers within Outlook.)

Personal drive 120 minutes

(A further search was undertaken on the individual's personal network drive.)

Total 500 minutes

26. The trust then carried out the same exercise for the Chief Operating Officer. Again it took 8 hours to restore one backup tape and carry out the relevant searches. The initial tape restoration in this case took significantly longer than the backup tape above, highlighting just how varied this process can be per tape and how for some it can be a particularly lengthy process. This was broken down as follows:

Request, server search, tape provision and tape restoration 240 minutes

(There are eight servers on which the information is held. It is not possible to know which server it will be upfront, as the server used varies with the location of the individual at the time, storage space and whether the individual worked across different locations.)

Keyword search: 20 minutes

- Department of Health
- Dept Health
- SAU
- Addictions
- Substance misuse
- Contracts

(This again produced approximately 300 results picking up the search item in both file names and within the email/document, therefore necessitating access to each email to determine its relevance.)

Email restoration: 120 minutes

(Emails were archived necessitating individual restoration. Each took between 10 seconds and five minutes.)

Further searches: 120 minutes

(Individual emails restored proves most are not relevant (less than ten emails). A manual search was therefore undertaken by scanning subject headers within Outlook.)

Total 500 minutes

27. The trust advised that the cost limit prescribed by the FOIA is almost met with just two backup tapes. If it were to restore all the backup tapes falling within the scope of the request it would take many hours and compliance would exceed the cost limit by a significant amount.
28. The Commissioner accepts that the scope of these questions will encompass a lot of information. The complainant has essentially asked for *all* correspondence over a three year period between the trust and the London Borough of Hackney and the Department of Health *relating* to the SAU. The trust has explained why there is no central location for this information and how a number of individuals will hold information falling within the scope of the request. It has explained that it is not possible to simply rely on key individuals or on the last archived tapes. Even the key individuals may not have received or been copied into every piece of correspondence between the relevant parties and the latest tapes would not include any information that has deleted. The Commissioner is therefore satisfied that in order to fully comply and identify accurately what recorded information is held it would need to locate, retrieve and restore all past tapes for each individual concerned.
29. The trust has carried out the exercise of retrieving, restoring and searching for relevant information for two backup tapes for two different individuals. For both it consistently took 8 hours to complete the process. This exercise alone has almost met the cost limit prescribed by the FOIA. It is clear that the same process is required for each tape and the retrieval and restoration of just one more backup tape will take the trust comfortably over the cost limit. To retrieve and restore each backup tape in order to comply fully with the request will exceed the cost limit by an excessive amount. Even a small random selection of backup tapes falling within the scope of the request would exceed the cost limit prescribed by the FOIA significantly.
30. For the above reasons, the Commissioner is satisfied that the cost to comply with these two questions would exceed the cost limit. Therefore she has decided that section 12 of the FOIA is engaged.

Question 8

31. The trust stated that this question is very similar to question 6 and any information held falling within this question will fall within question 6 as well. It explained that it took this question to mean more day to day operational information rather than contractual information or obligations. It was also agreed with the complainant that it did not include clinical information relating to individual patient care.
32. The trust advised that it felt it could limit the search of relevant information to four individuals for this question, comfortably knowing that these individuals will have had day to day contact with the London Borough of Hackney. These individuals being:
- Current Head of Service
 - Previous Head of Service
 - Current Performance Manager
 - Previous Performance Manager
33. Given the time period specified in this question the trust felt that both the previous Head of Service and the previous Performance Manager would more than likely hold the relevant information rather than the current post holders.
34. It accessed the mailbox of the previous Service Manager and retrieved and restored one backup tape. This took 260 minutes or over 4 hours. This is broken down as follows:

Request, server search, tape provision and restoration: 120 mins

An assumption that a keyword search would focus at a minimum on: 20

- SAU
- Addictions
- Substance misuse
- DAAT
- Hackney Council
- Performance

Email restoration: 120

(Emails individually restored, each taking between ten seconds and five minutes.)

Total: 260

35. The trust stated that essentially the same retrieval and restoration process is required for this question as it is for questions 6 and 7 and even if it only restored six tapes across the 12 month period and these two individuals, it would take the trust 26 hours to retrieve and restore the information it holds on a quarter of the backup tapes covering the scope this question. This is well in excess of the cost limit prescribed by the FOIA.
36. The trust has explained that the previous post holders will more than likely hold the requested information, due to the timeframe specified in the request, as opposed to the current employees and it would need to retrieve and restore all backup tapes for the 12 month period. The Commissioner is satisfied that the process required here is the same as the process required for questions 6 and 7 and even if she takes the lower estimate of 4 hours per tape for this question, it would comfortably exceed the cost limit of 18 hours if the trust were to comply and respond in full to this question.
37. For these reasons, the Commissioner has decided that section 12 of the FOIA applies to this question.

Question 5

38. Again the trust considered this question was very similar to question 8 and the information that would fall within scope. It said that the complainant informed the trust that she expected this question to cover the management of the contract during 2013 and 2014 and therefore information such as the minutes of the DAAT chaired performance meetings, copies of any relevant correspondence and notes take of any telephone calls.
39. The trust advised that whilst this question was specific in that it asked for the minutes of the chaired DAAT performance meetings it was also more far reaching when it also asked for copies of all relevant correspondence and notes of telephone calls during a 12 month period. The trust explained that the contract was regularly managed and reviewed during this time period. There would therefore be agendas and minutes for all meetings plus follow up requests and correspondence and correspondence relating to any issues raised. This information is not held in one central location but by those individuals within the trust that were involved in the management of the contract at this time.
40. Again it stated that there is a contracts database but this only held the contracts themselves and nothing more for the time period in question. It advises that this is in the process of being addressed for new contracts going forward. Therefore, in order to comply with this request it would have to search the accounts of the previous Head of Service

and the previous Performance Manager (exactly the same as question 8) who were responsible for the day to day running of the SAU at the time. Both have now left the trust and the exercise that would be required to do this is the same as outlined in paragraph 34 above for both members of staff.

41. Thinking about how the performance of a contract is managed, how the regular reviews and meetings feed into ongoing work and future contracts and how important this information is to a working relationship and any future relationships, the Commissioner questioned why key information cannot be more easily retrieved. The trust reiterated again how the information is held and how there is no central location for this information; only the contracts themselves. The trust also stated that the complainant's clarification that she requires all relevant correspondence and notes of telephone calls also broadened the scope of this question considerably. It explained again that four key individuals have been involved in the day to day management of this contract. However, for the time period specified it is very likely that the information held will be held by the previous Head of Service and the previous Performance Manager, as they were in post at this time. It would need to search the accounts of these two individuals for 2013 and 2014 and there is no other means of obtaining this information more cost or time efficiently.
42. The Commissioner has to accept on this occasion that the information relating to the contract's management during this 12 month period is held in the manner described and that there is no easier or less laborious method of retrieving it. She also notes that the request was made two to three years after the time period in question. It could be that the information from 2013 to 2014 is less relevant to anything that is happening currently.
43. The Commissioner has already accepted that section 12 applies to question 8. As the same accounts for the same period would need to be retrieved and restored, the Commissioner is willing to accept that section 12 of the FOIA applies to this question as well.

Section 43 – commercial interests

Questions 9, 13 and 14

44. For questions 9, 13 and 14, the Commissioner understands that the trust has withheld the amount charged to three London Boroughs between 1 April 2013 and 31 March 2014 for SAU services.
45. The trust has argued that disclosure of this information would be likely to prejudice its own commercial interests. It explained that the provision

of these services is highly specialised and competitive, with an increasing tendency for non NHS organisations to tender for services. In the last three to four years the trust has seen a rise in voluntary organisations competing and tendering for the work, so the market is niche, highly specialised and extremely competitive. The trust's services are commissioned by the London Borough's or local Commissioners, as they are the organisations that receive the funding for this provision. The contracts are short varying from a term of two years to five. It explained that the average contract term is three. It stated that patients who access this service are those with alcohol and drug addictions and secondary issues, such as homelessness, mental health problems and pregnancy for example. It confirmed that such patients are difficult to get hold of and have extremely difficult and complex needs.

46. From the amount charged during the time frame specified in the request, the trust argued that its competitors could easily work out the cost per patient. It said that the number of patients accessing the service is publicly known for the time frame specified or would be information it would routinely disclose under FOIA. It is therefore possible to work out the cost per patient from the withheld information and this information could then be used by its competitors when the contracts come up for renewal to undercut and outbid the trust. The trust stated that this would be likely to damage its commercial interests, its ability to compete fairly in the open market and secure future contracts.
47. The trust also advised that disclosure would be likely to lead to existing clients comparing the cost per patient for these contracts to the cost per patient for their own contracts and potentially approaching the trust for revised terms. Again, it stated that such consequences would be likely to prejudice the commercial interests of the trust. Existing clients may take the view that they have less favourable terms, request a reduction in cost and this would lead to a loss in valuable revenue for the trust.
48. The Commissioner questioned the trust further, asking it to explain in more detail how the cost per patient could be beneficial to its competitors. The Commissioner commented that the average cost per patient could be worked out from what the trust has said but she would expect the treatment one patient receives to differ from another considering the complexity and multiple issues patients that access this service often present with. She also put it to the trust that disclosure would not enable a competitor to work out, for example, the cost of specific services or treatments, which could potentially be seen to be similar to a pricing structure and therefore commercially sensitive. The Commissioner asked the trust to explain how one patient's care pathway compares to another and to provide a few examples of the services and

treatments offered to a couple of patients that have accessed the service.

49. The trust responded to these questions by saying that SAU services provide community medical and nursing services for people with drug or alcohol addictions. It works very closely with other treatment agencies which are part of the non mandated substance misuse service, including blood borne virus screening and hepatitis B immunisation and can also assist clients to achieve a drug- free life by helping them access community and residential detox or rehabilitation treatments through appropriate referral into specialist treatment. It went on to say that referrals are typically from GP's or community mental health teams. The care pathway across non mandated substance misuse/drug and alcohol service (of which the SAU is one element) generally will vary significantly per patient. However, the SAU itself will be constant. It confirmed again that this is why it considers the requested information to be commercially sensitive; disclosure would enable the cost per patient to be calculated and this would be useful to the trust's competitors during future tenders. It then provided the Commissioner with a service specification document for her to consider for one of the London Boroughs, commenting that this will assist in understanding more closely the functions of a SAU. It also provided another document which shows the recovery path across treatment areas.
50. While the Commissioner considers this information to be useful, it remains the case that the trust has not fully explained exactly how disclosure would be likely to have the effects described. The trust omitted from addressing the Commissioner's specific questions outlined in paragraph 48 above and referred her to two documents.
51. The Commissioner has reviewed this information. With regards to the document showing the recovery path across treatment areas, she considers this is a high level document which does not address the specific questions she had about the withheld information under consideration here. It does not help the Commissioner to understand more closely how similar or dissimilar one patient's care is to another and therefore how prejudicial disclosure of information which would enable a competitor to calculate the cost per patient would be to the trust.
52. The SAU service specification is more helpful. But without the trust's detailed responses to the questions raised in paragraph 48 above and submissions detailing exactly how the cost per patient would be likely to be useful to its competitors, the Commissioner remains of the view that section 43 of the FOIA is not engaged.

53. This document refers to “tailored” packages of care to the individual and “individualised care”, to offering treatment, prescribing, recovery plans and access to a number of other interventions such as housing, education, employment, health care and mutual aid. The document refers to drug users accessing the service, dependent drinkers *and* those presenting with both. In earlier discussions with the trust, it explained that some present with other complex issues as well such as homelessness and mental health problems.
54. For the cost per patient to be as commercially sensitive as the trust claims, the Commissioner considers the care and treatment offered must be the same or almost identical for each patient. Reading this document and listening to the trust’s earlier submissions, it appears that one patient may present with a couple of issues, yet another could present with a variety of complex needs that requires access to more elements of the overall service. Another may require the rapid response service, which the Commissioner understands is for those with severe and urgent needs. One patient may leave treatment drug and/or alcohol free and remains that way but another may return to treatment within six months as their dependency returns. The document also refers to different tiers of service to deal with the varying needs that present and the severity and urgency of those.
55. The Commissioner also considers that it will not be known upfront at contract renewal how many patients will access the service over the contract term. It can be estimated based on past usage but this will be an estimate. Also, it is likely that there will be continuing drives and incentives as time progresses to increase the usage of this service and its success and to target particular groups of the population that require the help but do not access it to the level it is considered they should.
56. Due to what the Commissioner can see of the service (and having received insufficient submissions from the trust to demonstrate to the contrary) she remains unconvinced that the ‘cost per patient’ that may be calculated from the withheld information would be useful to the trust’s competitors to the extent claimed. It does not equate to a price list or disclose any cost information on particular treatments or services offered, which the Commissioner may see would be likely to engage the exemption. Instead it seems that what can be calculated from the withheld information is the *average* cost per patient.
57. There also seems to be other, equally important, factors that are taken into account at contractual renewal. It is accepted that cost is always a significant factor but as stated above the Commissioner does not see how the disclosure of the requested information would be likely to be prejudicial to the commercial interests of the trust. Other factors such as

performance, delivery of past contract's aims and objectives, experience and reputation will play key roles in any decision to award a contract.

58. The Commissioner considers she has given the trust ample opportunity to demonstrate how disclosure of the requested information would be likely to have the effects described. She asked the trust direct and specific questions about the withheld information and how it sees this information being so useful to its competitors. The trust did not address these questions but instead provided the Commissioner will certain documents to review for herself. The onus is on a public authority to provide the necessary arguments for the Commissioner to consider and in the necessary detail. It is not the responsibility of the Commissioner to put these arguments together herself and essentially do the necessary work for the public authority.
59. For these reasons, the Commissioner has decided in this case that section 43 of the FOIA does not apply to this information and requires the trust to disclose it to the complainant.

Questions 11 and 12

60. For questions 11 and 12, the Commissioner understands that the trust has disclosed two agreements that were in place for the period 1 April 2013 to 31 March 2014 with two London Boroughs but with the value of each contract redacted.
61. Again the trust has said that the provisions of SAU services is highly specialised and competitive and there has been an increasing tendency over the last few years for non NHS organisations to tender for this work. It believes that if the value of the contracts were to be disclosed this would be likely to have a detrimental impact on its ability to compete for the provision of these services in the future, for the same reasons provided for questions 9, 13 and 14 above.
62. The trust stated that it is aware that a number of other organisations intend to tender for these services when the contracts are due for renewal. It is therefore anxious that it may lose contracts in future if other organisations offer to provide services at a reduced cost, based on the financial envelope and the number of patients treated (the latter being already in the public domain or available via FOIA). It stated this would be unfair, as it would not take into account the care it provides to dual diagnosis patients (those with a mental health condition plus substance misuse) and does not take into account the quality of care.
63. It stated that it would also be possible for commissioners to try to procure services at a reduced financial rate if it became known that the trust was providing SAU services on a different cost basis to other

commissioners. It advised that this would occur when services become subject to re-tendering at the end of the contract. It confirmed that it is also of the view that if the financial envelope for the provision of similar services in other Boroughs became known then commissioners may wish to revisit contract values. It confirmed that whilst it appreciates the importance of providing value for money it is proud of its reputation for providing high quality care and would like to continue to be in a strong position to offer services in the future.

64. The trust explained that the need for SAU services across the London Boroughs is very similar and the mix of patients that will access such services are from these boroughs and present with very similar problems. It stated that the contracts are therefore very similar, offering the same services and to very similar patients unlike, for example, a rural region where the needs for such service may differ and the patients themselves. It stated that it was therefore fairly easy for one borough to compare their contract, the value and cost of it, to another, if the requested information is disclosed.
65. Similar to questions 9, 13 and 14, the Commissioner remains unconvinced that the value of each contract would be likely to prejudice the commercial interests of the trust. She accepts that the SAU services' market appears niche and highly competitive and that the trust has faced over more recent years more competition for such contracts from the voluntary section. However, the Commissioner is of the opinion that the value of a contract or the cost of particular services is not the *only* factor taken into account at re-tender by those commissioning the services. It has stated itself that there are other important factors – the care it is able to provide to dual diagnosis patients (care potentially others are not able to provide or at least not to the same standard), the quality of care that has been provided under previous contracts, its reputation and any working relationship already built up with its clients.
66. The Commissioner considers that, although the contracts may be similar between the London Boroughs and the patients may present with similar problems, the value of the contract does not release any information about the particular negotiations that took place with that commissioner or any specific information on why that particular value was agreed. There could be various reasons why the value of one contract may differ to another. She is also of the opinion that the value of a contract does not equate to a pricing structure or individual costs for services; information which she may consider has commercial sensitivity. The service specification of one commissioner may differ to another and one commissioner may wish for the trust to offer slightly different services, or services in a different manner or even concentrate resources to tackling a particular element of specialist addiction services over the term of a particular contract.

67. Again the Commissioner considers the trust has had ample opportunity to demonstrate how this exemption applies to this information. From the information she has received, she remains unconvinced that the value of the contracts would be likely to prejudice the trust's commercial interests if they were disclosed. The Commissioner is only able to reach a decision based on the information she has been provided. If a public authority does not make the necessary arguments and it is not obvious to the Commissioner why the requested information is exempt, the Commissioner is left with no alternative but to reject the application of a particular exemption.
68. For the above reasons, the Commissioner has concluded that section 43 of the FOIA is not engaged.
69. As the Commissioner has decided that section 43 of the FOIA is not engaged, there is no requirement to go on to consider the public interest test.

Right of appeal

70. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

71. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
72. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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