

18 January 2024

IC-277450-R4X9

Request

You asked us:

"The ICO has carried out a data protection audit of Lewisham and Greenwich NHS Trust with its consent.

Within the report published on your website, it states:

"Freedom of Information has 1 urgent, 4 high, 8 medium and 1 low priority recommendations."

Please could you provide what the recommendations are"

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

We have searched our systems based on the information you provided and can confirm that we hold information within the scope of your request.

However, the information you have requested is exempt from disclosure under section 31(1)(g) of the FOIA. This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information *"would, or would be likely to, prejudice - ...the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

The purposes referred to in sections 31(2)(a) and (c) are –

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise..."

Section 31 is not an absolute exemption, and we must consider the prejudice or

harm which may be caused by disclosure. Also, we must carry out a public interest test to weigh up the factors in favour of disclosure and those against.

While the audit of Lewisham and Greenwich NHS Trust has been completed and a full report produced, the process remains ongoing as the ICO continues to engage with the Trust on a formal basis to monitor progress in implementing the audit findings. Therefore, we still consider the matter to be live. Disclosure of information at this stage would likely discourage our ongoing discussions with Lewisham and Greenwich NHS Trust and may damage our ability to influence the behaviour of data controllers. This would also likely result in other parties being reluctant to engage with the ICO in the future.

We believe that disclosure of the requested information would be likely to prejudice our ability to effectively carry out our regulatory function. The audit process requires full cooperation from the data controllers concerned. Often they must disclose to the ICO sensitive information that for very legitimate reasons they would not expect to be put into the public domain. If public authorities cannot have confidence that the ICO will not disclose such information in response to FOI requests where it is inappropriate to do so, this would have a detrimental effect on the efficacy of the audit process.

In addition, any information released at this stage could be misinterpreted, which in turn could distract from or obstruct the audit process.

With this in mind, we have then considered the public interest test for and against disclosure of the requested information.

In this case the public interest factors in favour of disclosing the information are as follows:

- Increased transparency in the way in which the ICO conducts investigations, improving the understanding of the ICO's regulatory functions;
- The understandable interest of the public in the details of the audit's findings;

The public interest factors in maintaining the exemption are as follows:

- The public interest in encouraging Lewisham and Greenwich NHS Trust, as well as other data controllers, to voluntarily submit to audits by the ICO to improve their data protection practices, ensuring the ICO's effectiveness as a regulator;
- The public interest in maintaining organisations' trust and confidence that their correspondence with the ICO will be afforded an appropriate level of

confidentiality, thus allowing the ICO to complete audits as robustly as possible;

- The public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments or information will be made public prematurely or, as appropriate, at all.

Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure. Disclosure of the requested information would be likely to be prejudicial to our regulatory function as it would impact upon our ability to effectively carry out investigations of this nature both now and in the future.

This concludes our response to your request.

Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely