

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2016

Public Authority: NHS Greater Preston
Clinical Commissioning Group

Address: Chorley House
Lancashire Business Park
Centurion Way
Leyland
PR26 6TT

Decision (including any steps ordered)

1. The complainant has requested information concerning a new estates strategy. NHS Greater Preston Clinical Commissioning Group ('the CCG') withheld the information under section 22(1) of the FOIA because it said the information was intended for future publication.
2. The Commissioner's decision is that the CCG correctly applied section 22(1) to the request and that the public interest favours maintaining the exemption.
3. The Commissioner does not require the CCG to take any steps.

Request and response

4. On 15 February 2016 the complainant wrote to the CCG and requested information in the following terms:
"We would be grateful if your CCG would supply us with a copy of Phase 1 of the New Estates Strategy prepared by GVA Grimley Limited which has been forwarded to your CCG."
5. The CCG responded on 23 February 2016. It withheld the information, citing section 22 of the FOIA.
6. Following an internal review the CCG wrote to the complainant on 11 March 2016. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 5 April 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on the CCG's application of section 22(1) of the FOIA to the request.

Reasons for decision

9. In his complaint to the Commissioner, the complainant noted that the new estates strategy in question was ongoing and that although Phase I of the strategy had been completed, it forms part of the strategy as a whole. The complainant acknowledged that once all the phases of the strategy had been completed, the document would be presented to the CCG Governing Body and, once approved, would be made available to the public. However, the complainant was not satisfied that, although it was complete, the CCG would not disclose Phase 1 of the strategy to him, in advance of this.
10. Section 22(1) of the FOIA says that information is exempt from disclosure if (a) the public authority holds it with a view to it being published by the authority or any other person, at some future date (whether determined or not); (b) the authority held the information with a view to such publication at the time the request was made; and (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).
11. Section 22(1) is subject to the public interest test.
12. In order to determine whether section 22(1) is engaged the Commissioner therefore considered the following questions:
 - When the complainant submitted the request, did the Council intend to publish the information at some date in the future?
 - If so, had the Council determined this date when the request was submitted?
 - In all the circumstances of the case, was it 'reasonable' that the Council should withhold the information from disclosure until some future date (whether determined or not)?

Was the information held with a view to its publication at a future date?

13. The Commissioner's guidance on section 22 says that although a public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date in place. A public authority may still be able to apply section 22 if:
- there is a publication deadline, but publication could be at any date before then
 - publication will take place once other actions have been completed
 - publication will take place by reference to other related events; or
 - there is a draft publication schedule that has not been finalised.
14. Therefore as long as the public authority has decided that it or another person will publish the information at some time in the future, the exemption may apply.
15. In its submission to the Commissioner, the CCG confirmed that Phase 1 of the estates strategy related to an ongoing programme of research consisting of three phases. At the time of the request, only Phase 1 had been completed. The Commissioner understands that the purpose of the final estates strategy would be to help associated CCGs understand the capacity of the estates and facilities across their geographic areas, in order to utilise, reduce or develop these in the most appropriate way to meet the needs of their current and future populations.
16. The CCG acknowledged that there was no explicit record stating that the research would be made publically available but that, as the complainant has also told the Commissioner, it was always intended that when completed, the strategy would be presented at a CCG Governing Body meeting, the papers for which are all published.
17. In addition, the CCG says that the strategy had to link other CCG commissioning intentions and was a directive from NHS England. The strategy was to be developed in line with an urgent care transformation programme and the CCG's vision for primary care over the next five years.
18. The Commissioner has considered the CCG's arguments. She has also noted that the complainant has acknowledged that it was the CCG's intention to present the completed strategy document at a future CCG Governing Board meeting, and that Board meeting papers are published. The Commissioner is therefore prepared to accept that, at the time of the request, it had a settled intention to publish the requested

information. The publication date was not specified but would take place once all the phases of the strategy had been completed and the completed strategy had been approved by the CCG Governing Body ie once other actions had been completed.

Was it 'reasonable' to withhold the information?

19. The CCG has told the Commissioner that disclosing the information would, or would have been likely to, prejudice the research programme, the interests of participants in the programme, or other public authorities holding, or intending to publish, a report of the research.
20. The CCG says that releasing confidential information relating to other member GP practices and their future intentions (with regards to co-locating and the number of their operational sites) could put a GP practice in a commercially advantageous position in terms of building an estate portfolio (ie purchasing properties to be vacated). The CCG says that it is also likely that for one GP member practice to have information relating to the estates research project at such an early phase could put that practice at an advantage in relation to other member practices. The CCG has not provided further information about this particular point.
21. In line with her guidance, the Commissioner considers that, despite the requested information, namely Phase 1 of the strategy, having been completed, it was sensible and fair to all concerned for the CCG to withhold this information so that it could be published with the remaining phases of the strategy, once they were complete and the Governing Body had approved them. The Commissioner's guidance on section 22 advises that, when considering whether section 22 applies it is appropriate to consider whether it is necessary to avoid the possibility of the requester gaining any advantage in obtaining the information prior to general publication. From the information presented to her, and in line with her guidance, the Commissioner accepts that withholding the information was also necessary to avoid the possibility of the complainant or another party gaining any advantage by obtaining the information prior to general publication.
22. The Commissioner is therefore satisfied that the CCG correctly applied section 22(1) to the information the complainant had requested.

Public interest test

23. The exemption at section 22(1) is qualified by a public interest test. Therefore, the Commissioner has considered whether in all the circumstances of the case, the public interest in maintaining the

exemption outweighed the public interest in disclosure at the time of the request.

24. The CCG has acknowledged to the Commissioner that there is a general public interest in disclosing information as this demonstrates public authorities' commitment to being open and transparent.
25. With regard to the public interest in maintaining the exemption, the CCG says that the requested information was only one part of a planned research project. Without the 'whole picture' there was the potential for the information to be misconstrued, which could lead to public distress or anxiety about the whole project. Information gathered in Phase 1 of the project highlighted the potential for particular GP practices to merge or relocate. However, this may not have been the proposed outcome of the completed project. Releasing the information at the time of the request may therefore have resulted in undue distress amongst patients registered with those particular practices.
26. Having considered the CCG's arguments, the Commissioner is persuaded on this occasion that there was greater public interest in the CCG being able to release the requested information as planned; that is, together with the other parts of the project once these had also been completed and the whole strategy approved. Transparency is important but releasing the information as intended – with the remaining parts of the strategy, once everything had been approved– would avoid both any unnecessary anxiety arising from an incomplete picture, and any unfairness arising from parties gaining a commercial advantage from the early release of the information.
27. The CCG has confirmed that the full findings of the research project are now available on the CCG's website.

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
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