

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 May 2024

**Public Authority:** Somerset NHS Foundation Trust  
**Address:** Musgrove Park Hospital  
Parkfield Drive  
Taunton  
TA1 5DA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the parking contract between Somerset NHS Foundation Trust and Q-Park. Somerset NHS Foundation Trust ('the Trust') provided copies of the contract and relevant schedules and advised that some information had been redacted under section 43 of FOIA (commercial interests).
2. The Commissioner's decision is that the Trust was entitled to apply section 43(2) to withhold the redacted information.
3. The Commissioner requires no steps as a result of this decision.

#### **Request and response**

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4. On 12 September 2023, the complainant wrote to the Trust and requested information in the following terms:  
  
"I am writing under the Freedom of Information Act to request:  
  
1. A copy of the contract that exists between Somerset NHS Foundation Trust and Q-Park, which covers staff and public car parking across the Trust.

Additionally:

2. What was the profit made by Somerset NHS Foundation Trust as a result of the contract with Q-Park in 2021 and 2022?
3. What was the profit made by Q-Park, in 2021 and 2022, as a result of the contract with Somerset NHS Foundation Trust?
4. What is the % division of profit between Somerset NHS Foundation Trust and Q-Park?"
5. The Trust responded on 25 September 2023. It provided a response for question two and stated that it was withholding the rest of the requested information under section 43 of FOIA.
6. Following an internal review, the Trust wrote to the complainant on 7 February 2024. It now provided copies of the contract documents and stated that some information had been redacted under section 43 of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 January 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the Trust was correct to withhold the redacted information on the basis of section 43(2) of FOIA.

### **Reasons for decision**

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#### **Section 43(2) – commercial interests**

9. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
10. In order for section 43(2) to be engaged, three criteria must be met:
  - the harm which the public authority envisages must relate to someone's commercial interests;
  - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and

- the level of likelihood of prejudice being relied upon by the public authority must be met (that is, it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
11. The Trust explained that it has provided as much of the contract information as possible. It considers that disclosing the redacted information would be likely to disadvantage the Trust and Q-Park in any future dealings or arrangements that either organisation may enter for car parking provision. The Trust explained that this could place Q-Park at a distinct commercial disadvantage by providing other potential suppliers with insight into contracting methodology and pricing information that would otherwise not have been available to them.
  12. The Trust added that disclosing the redacted information could influence any future arrangements or tender exercises for car parking provision, which could compromise the Trust's ability to obtain value for money. The Trust argues therefore, that this would prejudice the Trust's economic interests.
  13. The Commissioner is satisfied, first, that the harm the Trust envisages relates to commercial interests; those of the Trust itself and of Q-Park.
  14. Second, the Commissioner accepts that a causal link exists between disclosing the information and commercial prejudice. The information is related to a contractual pricing model that would have been agreed through a competitive tender process and possibly post-tender negotiations. The pricing structure would likely be tailored to the arrangements between the Trust and Q-Park and its disclosure would give competitors detailed insight into the contracting methods of both the Trust and Q-Park.
  15. In its submission to the Commissioner, the Trust has stated that it considers the prejudice would be likely to happen and the Commissioner accepts the lower threshold of likelihood in this case; that the envisioned prejudice would be likely to happen.
  16. Since the three criteria above have been satisfied, the Commissioner accepts that disclosing this information would be likely to result in commercial prejudice to Q-Park and the Trust alike. The exemption at section 43(2) is engaged.
  17. The Commissioner will now consider the public interest factors in favour of disclosing the redacted information or continuing to withhold it.

### **Public interest test**

18. Section 43(2) is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption is engaged, the

requested information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

### **Public interest factors in favour of disclosing the requested information**

19. The complainant has argued that there is a public interest in disclosing the financial particulars of the parking contract to promote competition between parking providers and provide best value for money.
20. The Trust has acknowledged that there is a public interest in openness and transparency and in allowing access to information which enables the public to understand how public authorities work and how the Trust receives and spends public money. The Trust added that this is why it has kept redactions to a minimum.

### **Public interest factors in favour of maintaining the exemption**

21. The Trust has explained that releasing the redacted information would be likely to impact the ability of the Trust and the NHS to secure the most cost-effective agreements for the public. The Trust argued that if suppliers and bidders had access to the redacted information, it would allow them to submit proposals that include overly inflated costings even if they could legitimately offer a lower amount. The Trust considers that the consequence of this is not in the public interest.

### **Balance of the public interest**

22. Whilst the Commissioner accepts that there is public interest in transparency about how the Trust spends public money, he also understands the importance of maintaining its ability to negotiate and procure services competitively. The Commissioner is also mindful that the prejudice to commercial interests extends to Q-Park. The Commissioner considers that the information that the Trust has disclosed meets the public interest in transparency to a satisfactory degree. He considers that the balance of the public interest is weighted in favour of non-disclosure as he agrees that the release of this information is likely to result in a reduction in both the Trust's and Q-Park's ability to negotiate, and a reduction in Q-Park's competitiveness. None of these factors are in the public interest.

### **Other matters**

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23. The Commissioner notes that the Trust failed to carry out an internal review within 40 working days. The Section 45 Code of Practice advises

all public authorities to carry out internal reviews in a timely manner and within 20 working days. A total of 40 working days is permitted in particularly complex cases only.

24. The Trust is reminded of the requirements of the Code and of the importance of carrying out internal reviews in a timely manner and in accordance with the timeframes specified in the Code. The Commissioner has recorded this as part of his routine monitoring of public authorities.

## Right of appeal

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25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**