

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2024

Public Authority: NHS Greater Manchester Integrated Care (GMIC)

Address: 4th Floor, Piccadilly Place, Manchester, M1 3BN

Decision (including any steps ordered)

1. The complainant has requested GMIC to disclose information relating to an independent review it was undertaking into allegations they had raised. GMIC refused to disclose the information citing section 31(1)(g), 40, 41 and 43 of FOIA.
2. The Commissioner's decision is that GMIC is entitled to refuse to disclose the information in accordance with section 31(1)(g) of FOIA. He does not require any further action to be taken.

Request and response

3. On 30 November 2023, the complainant wrote to GMIC and requested information in the following terms:

"In an email to [name redacted] at 14:26 on 23 October 2023 Mr Rob Bellingham [Director of Primary Care and Strategic Commissioning, NHS Greater Manchester Integrated Care Board (NHS GMICB)] stated: "I am in the process of commissioning an independent review of the matter and this will be progressed as a priority this week." The independent review relates to concerns raised regarding fraud. This is a matter of public interest.

Please provide a copy of all information held by NHS GMICB regarding this independent review from 17 October 2023 to 30 November 2023

- inclusive. Please include all emails, call recordings, minutes of meetings and any other information held.”
4. GMIC responded on 2 January 2024. It refused to disclose the requested information citing section 30 of FOIA.
 5. The complainant requested an internal review on 4 January 2024.
 6. GMIC carried out an internal review and notified the complainant of its findings on 1 February 2024. It upheld the application of section 30 and also applied 40, 41 and 43 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 1 February 2024 to complain about the way their request for information had been handled. They dispute any of the exemptions cited apply and believe the information should be disclosed.
8. During the Commissioner’s investigation GMIC slightly altered its position and changed its reliance on section 30 of FOIA to section 31(1)(g) of FOIA.
9. The Commissioner will first consider the application of section 31(1)(g) of FOIA. He will only go on to consider the other exemptions cited if it is found that section 31(1)(g) does not apply.

Reasons for decision

Section 31 law enforcement

10. Section 31(1)(g) of FOIA states that information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act 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).
11. GMIC has stated that it is the following sections of subsection (2) which are applicable in this case:
 - (a) The purpose of ascertaining whether any person has failed to comply with the law.
 - (b) The purpose of ascertaining whether any person is responsible for any conduct which is improper.

12. GMIC said that it has a duty to investigate when concerns or allegations are made against a provider it has commissioned or about decisions it has made as an organisation. It confirmed that Mersey Internal Audit Agency (MIAA) were therefore commissioned by GMIC to undertake an independent review/investigation, which also included reviewing the internal process/action taken by GMIC.
13. At the time of the request MIAA was actively investigating the allegations. It confirmed that the withheld information was gathered for the purposes of this ongoing investigation and was provided to GMIC in good faith and in confidence. It argued that if it were to disclose this information it would be likely to result in a loss of confidence from its provider organisations and discourage them from the future sharing of information and engaging in future investigations or reviews of this nature. This would be likely to prejudice its ability to investigate future allegations and concerns effectively, as it would adversely affect the quality of information that is shared. This would in turn have a negative impact of the NHS services provided and the patients it serves.
14. The Commissioner notes that at the time of the request the investigation was very much live and ongoing and MIAA was still in the process of gathering information, considering this and investigating the allegations and concerns raised. He understands that the information gathered was supplied to GMIC in confidence and it will have been the expectation of those that engaged that their contributions would remain confidential.
15. He considers that there is a real and significant risk that disclosure would be likely to have a negative impact of the voluntary supply and free flow of candid information for this particular investigation and future ones. If disclosure were ordered it would be likely to deter staff and others from engaging and co-operating with such investigations in the future, as they would fear that the information they had shared could be disclosed into the public domain. Staff and others would be less likely to provide their full and frank contribution to similar future investigations and this would be likely to adversely affect GMIC ability to carry out the functions referred to in paragraph 11 above.
16. For the above reasons the Commissioner is satisfied that section 31(1)(g) is engaged.

Public interest test

17. GMIC confirmed that there is an inherent public interest in ensuring that there is openness and transparency in the way it operates and acknowledged that disclosure would be consistent with its commitment to proactively publishing data that is in the wider public interest.

18. However, in this case it considers the public interest rests in maintaining the exemption. It said that the public interest rests in allowing it to function efficiently and ensuring that it is able to provide the best services possible for its patients. GMIC argued that it is essential that the relationships between commissioner and providers is a trusted one and that providers can feel confident to be able to take part in open and honest discussions, without the fear of repercussion or public disclosure.
19. GMIC confirmed that the withheld information was gathered for the purposes of an ongoing investigation and was provided to it in good faith and on the basis that it would be confidential. It stated that disclosure would be likely to result in a loss of confidence from its provider organisations and discourage them from the future sharing of such information and co-operating with similar investigations or reviews in the future. It said that this would be likely to prejudice its ability to carry out its functions effectively and negatively impact the services provided and the patients it serve. Such consequences are not in the wider interests of the public.
20. As detailed above, GMIC confirmed that the investigation was ongoing at the time of the request. Disclosure would have impeded the work of the relevant parties and resulted in confidential information entering the public domain before a conclusion had been reached. Disclosure at this time would have been likely to prejudice its ability to reach a thorough and fair conclusion. Again, it said such consequences are not in the public interest.
21. The Commissioner recognises the public interest in openness, transparency and accountability and in providing the public with access to information to enable them to understand more clearly how decisions are made and why. He acknowledges there will be a public interest in understanding how the allegations and concerns have been investigated and whether appropriate and effective action has been taken. Access to the requested information would allow those concerned to see how the allegations are being investigated and what information has been gathered to assist with the investigation.
22. However, the Commissioner considers the public interest in favour of maintaining the exemption is much greater in this case. At the time of the request the investigation was still ongoing, disclosure at this time would have been likely to prejudice GMIC's ability to continue with this investigation fairly and effectively. Disclosure would also deter relevant parties from co-operating with such enquiries and investigations in the future for the fear the information they share could be disclosed into the public domain. Disclosure would be likely to discourage such parties from assisting in such investigations in the future and dilute the quality and candidness of the information they are willing to share. This would

then have a knock on effect on the ability of GMIC to carry out such enquiries in the future in order to meet and adhere to the functions this exemption is designed to protect.

23. Disclosure would be likely to erode the trust between GMIC, its providers and stakeholders and have a negative effect of the services it can provide and the patients it serves.
24. The Commissioner considers the public interest rests in maintaining GMIC's ability to effectively and efficiently investigate concerns and allegations that are raised with it, to ensure that swift action is taken where necessary and patient services are maintained. He accepts its ability to do this heavily relies on the free flow of voluntary information and the willingness and frankness of staff and others to assist with such investigations.
25. For the above reasons, the Commissioner has decided that the public interest rests in maintaining the exemption.

Right of appeal

26. 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

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

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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
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