

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2024

Public Authority: NHS Coventry and Warwickshire Integrated Care Board

Address: Headquarters: Westgate House, Warwick
C/O Parkside House
Quinton Road
Coventry
CV1 2NJ

Decision (including any steps ordered)

1. The complainant requested information from NHS Coventry and Warwickshire Integrated Care Board (the ICB) relating to the South Warwickshire Community Hospital Bed Review. The ICB relied on section 22 of FOIA to withhold the information as it was intended for future publication.
2. The Commissioner is satisfied that the ICB was entitled to rely on section 22 of FOIA to withhold the information and that, at the time of the request, the balance of the public interest favoured maintaining the exemption.
3. The Commissioner does not require the ICB to take any further steps as a result of this decision notice.

Request and response

4. On 21 December 2023 the complainant submitted the following request for information to the ICB:

“Under the provisions of the FoI Act, please supply me with all information relating to the pre-consultation review process underway relating to the decision to exclude hospital beds from the new development at The Ellen Badger Hospital Shipston on Stour.

In particular

- What does the process involve?
 - What has happened so far?
 - What are the timescales?
 - What are the governance processes involved?"
5. The ICB responded on 23 January 2024, stating that it was withholding the requested information under the exemption provided by section 22(1) of FOIA, on the basis that it was intending to publish the information at a later date.
 6. The complainant wrote to the ICB on 24 January 2024, requesting it carry out an internal review of its refusal to provide the requested information.
 7. Following an internal review, the ICB wrote to the complainant on 21 February 2024, upholding its original decision to refuse the request under section 22(1) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 18 March 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine if the ICB was entitled to rely on section 22 of FOIA to withhold the requested information.

Reasons for decision

Section 22 – information intended for future publication

10. Section 22(1) of FOIA says that information is exempt information if:
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)
 - (b) the information was already held with a view to such publication at the time when the request for information 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. For the exemption in section 22 to apply, the public authority must, at the time it received the request, have had a settled expectation that the information would be published at some future date, even if no precise date has been set.
 12. Section 22 is a qualified exemption which means it is also subject to the public interest test.
 13. The ICB has confirmed that it intends to publish all the information requested by the complainant in all four points of their request.
 14. The ICB stated that a pre-consultation business case is published as routine as part of the public consultation process and usually includes all background information which has been used to inform it. The ICB advised that this is still under development and will describe the processes, progress so far, timescales and governance involved.
 15. The ICB stated that at the time the request was received, the publication date had not been determined. However, it has confirmed that work is ongoing, and a timetable is now being developed which it stated will be reviewed by the ICB Executive Team and through formal ICB statutory governance.
 16. The ICB has stated that the pre-consultation review remains under development and that providing this document before the pre-consultation business case has been completed would mean that the scope and findings are not given in context or at the same time as the actions resulting from the findings and recommendations. The ICB has stated that this could cause worry amongst patients and the public if they were to draw conclusions based on incomplete information. The ICB considers that viewing any part of the pre-consultation in isolation of additional information, which is yet to be gathered, will create significant risk of misinterpretation, and potentially put the consultation at risk.
 17. The ICB also stated that providing this document before the pre-consultation business case has been completed could also cause a large volume of contacts for the ICB and/or reputational damage. It considered that this could cause the public to draw false conclusions based on the fact that there is currently only partial data and there are wider considerations to this review. This could cause concern, reputational damage, and an unmanageable number of contacts or requests for further information.

18. The Commissioner has considered the ICB's submissions and accepts that, at the time of the request, there was a settled intention to publish the requested information. He is also satisfied that, in the circumstances, it was reasonable for the ICB to withhold the requested information under section 22 of FOIA until the future publication date. He is therefore satisfied that the exemption under section 22 applied to the requested information.
19. As the Commissioner is satisfied that section 22 applies to the requested information, he has gone on to consider the public interest test.

Public interest test

20. The exemption at section 22(1) is qualified by a public interest test. The Commissioner therefore has to consider 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.

The complainant's position

21. The complainant stated that their local charity donated £635,000 of its funds to support the development of a new community hospital to replace the old Ellen Badger Hospital.
22. The complainant explained that having emptied and closed the Ellen Badger Hospital, the CEO of South Warwickshire University NHS Foundation Trust (SWFT) announced a recommendation that the new facility would not contain any beds. (i.e. in the complainant's view, it would not be the replacement facility which had been promised).
23. The complainant explained that the charity asked for their funds to be returned, which was refused, resulting in the charity suing SWFT for the return of the money.
24. The complainant stated that the local community came together to demonstrate over the decision, following which the ICB announced a 'Pre-Consultation Review' of this decision. The complainant has stated that the ICB has since refused to respond to requests for detail as to what the review involves and whether it will give the community a chance to express their views.

The ICB's position

25. In its initial response to the request, the ICB recognised that there is a public interest in transparency that would be served by releasing the requested information. However, it believed that transparency would also be achieved by the future publication of the information at the point that it publishes the pre-consultation business case.

26. The ICB also recognised the public interest in disclosing the requested information as quickly as possible.
27. However, the ICB argued that there was a significant (and what it considered to be the most important) public interest in withholding the requested information to ensure the maximum cost effectiveness of the use of public funds. The ICB explained that providing the information in response to the request is not the most cost-effective way of placing this information into the public domain, given that there is an intention to publish it at a later date. The ICB argued that to assess and process the information in response to a request would be a duplication of effort and work and would take time to validate and collate, resulting in an unnecessary expense to public funds.
28. The ICB also argued that the release of this information before its intended publication would result in members of the public drawing false conclusions from unapproved, incomplete and/or inaccurate information being disclosed. It stated that to publish this information at the time of the request would effectively give a false picture as the information is not finally validated and is still subject to change throughout the year.
29. The ICB stated that to disclose the requested information at the time of the request would also most likely result in inaccurate information still being in circulation once a final position is published, which would be confusing and misleading to the public and potentially lead to complaints received by the ICB.
30. The ICB is therefore of the view that, on balance, it was reasonable at the time of the request to withhold the requested information from disclosure until the publication of the information, and that the public interest in favour of maintaining the exemption outweighs the public interest in disclosure as detailed above.

The Commissioner's decision

31. Having taken the arguments into account, the Commissioner agrees with the ICB that the balance of the public interest favours maintaining the exemption. He recognises that there is a general public interest in transparency but, in this case, that there is a greater public interest in allowing the ICB to publish the requested information in line with its normal publication procedures.
32. The Commissioner acknowledges that there is a clear public interest in the work of public bodies being transparent and open to scrutiny. He acknowledges the public interest in the potential plans to change community healthcare provision, and the concerns about the potential impact any changes may have on the local community.

33. However, he also recognises the ICB's commitment to complete its pre-consultation business case process to ensure that the rationale for any decisions made is accurately evidenced and recorded. He also recognises the concerns of the ICB that disclosure before this time, without all the relevant context and rationale, will increase the risk of confusion and of people potentially becoming unnecessarily concerned due to an incomplete picture being available.
34. For these reasons, he is satisfied that the public interest in this case is better served by the information being withheld until such time as the ICB is ready to publish it in line with its normal publication procedures.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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