

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2024

Public Authority: Department of Health Northern Ireland
Address: Castle Buildings, Stormont, Belfast, BT4 3SQ

Decision (including any steps ordered)

1. The complainant has requested the Department of Health Northern Ireland (DoH) to disclose information relating to the practices where GP contracts have been handed back and the practices have had to be Trust managed. DoH disclosed some information but withheld the remainder, citing section 43 of FOIA.
2. The Commissioner's decision is that DoH is not entitled to rely on section 43 of FOIA.
3. The Commissioner requires DoH to take the following steps to ensure compliance with the legislation.
 - Disclose the remaining withheld information to the complainant.
4. DoH must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 November 2023, the complainant wrote to DoH and requested information in the following terms:

- “1) The total number of GP contracts handed back SPPG/HSCB in each given year
 - 2) The total number of GP contracts handed back SPPG/HSCB in each given year, which subsequently became directly managed by a HSC Trust for any period of time. Please provide the name of the practice and Trust which took over management and dates during which it was Trust managed.
 - 3) The number of registered patients at each practice at the time the contract was handed back to SPPG
 - 4) The number of GP partners at each practice at the time the contract was handed back to SPPG/HSCB
 - 5) The status of each practice where the contract was returned as at 31 March for each given year, or 30 Sept for 2023/24 (i.e. new contractor found, Trust managed, permanently closed and lists dispersed)
 - 6) For each Trust managed practice the number of registered patients as at 31 March for each given year, or 30 Sept for 2023/24
 - 7) Per managed practice, the total funding and total expenditure (including variance) for each year the practice was Trust managed.”
6. DoH responded on 5 December 2023. It disclosed the requested information for questions 1 to 6, but withheld the requested information for question 7 under section 43 of FOIA.
 7. The complainant requested an internal review on 22 December 2023.
 8. DoH carried out an internal review on 4 April 2024. It upheld the application of section 43 of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 16 May 2024 to complain about the way their request for information had been handled. They dispute the application of section 43 of FOIA to question 7 of their request and commented that comparable data had been disclosed elsewhere without any commercial detriment.
10. The Commissioner considers that the scope of his investigation is to consider DoH's handling of question 7 of the complainant's request and its decision to withhold the requested information under section 43 of FOIA.

Reasons for decision

Section 43 – commercial interests

11. Section 43 of FOIA states that a public authority can refuse to disclose information if its disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party.
12. It is a qualified exemption, so it is also subject to the public interest test.
13. DoH said that when it is notified by a General Medical Service (GMS) contractor of their intention to hand back their contract the priority is to maintain the provision of service to patients with as little disruption and impact as possible. It explained that the reasons for contracts being handed back vary, some are smaller practices in rural locations with a smaller list size, some are single handed practices where there is no obvious replacement who would take on the contact. Others find it difficult to source new staff to allow expansion/continuation of the service.
14. DoH said ideally a replacement GMS contractor is identified and arrangements progress for a seamless handover to the new contractor. In recent years, it explained how the number of contracts handed back has increased, in particular, from practices in rural parts of Northern Ireland, where patient list sizes may be smaller and where it is difficult to recruit and retain staff.
15. It commented that in some instances, despite repeated attempts, a new GMS contractor cannot be identified. The only alternatives which remain are either the dispersal of the practice list, with patients being allocated to alternative practices in the vicinity. Or where this is not feasible, given the lack of capacity in the vicinity, the relevant Health and Social Care Trust for that area will be directed by the Minister of Health to temporarily take over the management of the practice until such a time when a suitable GMS contractor can be identified.
16. DoH advised that when the above situation arises and the Trust is directed to maintain the service, a unique set of circumstances is created. It explained further that the Trust is the final option and at short notice is asked to take over and run an unfamiliar service. The Trust will be faced with the same difficulty as the original contractor in terms of recruiting staff. It argued that it is likely, in order to be successful, that the Trust will need to offer higher fees to Locum GPs in order to attract staff.

17. It confirmed that it is not possible to just stop providing a service to patients on that practice list. As a result, there has been occurrences DoH is aware of where some Trust managed services have had to offer significantly increased payments in order to ensure services to patients are maintained.
18. DoH confirmed that payments to GMS providers are made up of a number of elements to inform a financial envelope – a Global Sum which is representative of the number of patients on its list, a goods and services element and a further element which reflects any enhanced services which the individual practice might deliver (DoH said it is this element which enables the practice to increase their income). It went on to say the contractors are expected to deliver their services within their own Financial Envelope. The circumstances described above are unique – DoH explained that GMS practices are a commercial enterprise which operate within a financial envelope with the aim of ensuring a financial return for contract partners. Whereas, the focus of interim Trust managed practices is not commercially driven but rather to ensure a continuation of services.
19. DoH stated that the temporary inflated costs incurred by the Trust are met by DoH but have in turn created financial pressures. It argued that should the Trust costs be published, the likely consequence will be a significant number of existing contractors returning their contracts or seeking reimbursement at a level comparable to Trust managed contracts. It states that should this happen, DoH would not be in a position to fund the increased level and it is likely services to patients would fail.
20. DoH advised that disclosure would be likely to prejudice its relationships with its GP partners. It argued that it would have a direct and immediate impact on business function and ultimately patient experience. It stated that it is limited to an existing budget and should further practices hand back contracts it will create pressure for remaining practices and prejudice those relationships.
21. It confirmed that it is exceptional circumstances when a Trust takes on the management of a contract – it is a last resort and is as a result of a direction by the Minister on the basis that costs will be met in order to ensure continuity of service. DoH considers that if the requested information was disclosed and the additional funding incurred made available, the incentive for existing contracted practices to remain in contract is significantly impaired. As an example, DoH said that if a contract holder knew that if they handed back their contract they could operate as a Locum and receive higher fees, they would be encouraged to do so.

22. It also said that GMS Regulations provide the legal framework via which GMS contractors are funded – information is made available to replacement PCP's to enable them to identify what the practices would receive in terms of funding. DoH argued that whilst this would be comparable financially in terms of the previous provider, the new contractor would be able to influence that by agreeing to deliver further enhanced services for which additional funding may be available or they may be able to attract additional staff or bring other alternatives to the table.
23. It stated that it was well aware that Health and Social Care Trusts are required to publish their annual accounts and reports. However, it assured the Commissioner that these would not contain the level of detail being requested here.
24. The Commissioner has reviewed the withheld information and considered DoH's submissions and he remains unconvinced that section 43 of FOIA applies. He does not agree that disclosure of the requested information would be likely to prejudice the commercial interests of DoH or a third party.
25. The withheld information consists of one total figure for each relevant practice, as DoH has confirmed that the total funding and expenditure is the same, there is no variance. DoH confirmed that costs include premises, rent and rate charges, equipment and other running costs.
26. Although the Commissioner has been advised that there is an increase in the number of GMS contracts being handed back, he notes that this is for a number of different reasons and primarily the aim is to identify a replacement contractor. The reasons given by DoH in its submissions are listed in paragraph 13 above. None reference contracts being handed back so contracted GP's can switch to being a Locum GP being one of them.
27. Locum GP's have to be flexible, going where the work is, have short term contracts and are self-employed. Although they are paid more, such work is not for everyone and is short term. Contracted/employed GP's will also already know that they could earn more per hour if they went locum. The Commissioner is not convinced the disclosure of the requested information would be likely to encourage more contracted/employed GP's to hand back their contracts and go locum. Many people cannot work in this manner or chose not to, preferring the stability and benefits an contracted/employed GP would get.
28. It has stated itself that it is only in 'exceptional circumstances' and as a last resort when a Trust takes on the management of contract. It is also by instruction from the Minister of Health. These are temporary

arrangements until a permanent solution is identified. The Commissioner considers it will be known and appreciated that Trust managed practices will be more costly whilst under the management of the Trust, due to the unique circumstances they generate. The Trust and DoH will be under pressure to find a permanent solution as quickly as possible, as a result of the costs involved in a practice being Trust managed.

29. The withheld information is one figure, inclusive of all rent, premises and running costs. There is no means of knowing how much of this is for locum fees and then to work out what had to be paid by the Trust to those locums. The Commissioner appreciates that if, for example, one figure for one practice is noticeably higher than the figure for another, one may put those higher costs down to higher locum fees. However, the Commissioner considers this to be a fairly remote possibility which may occur in a small number of cases. In general, he is struggling to see how the disclosure of the requested information would be likely to encourage contracted/employed GP's to hand back their contracts and switch over to being a locum, thereby increasing the costs overall for Trusts and DoH. He cannot therefore conclude that the required threshold of likelihood for section 43 to apply in this case has been met.
30. For the above reasons, the Commissioner has decided that section 43 of FOIA does not apply.

Other matters

31. The Section 45 Code of Practice recommends that public authorities carry out internal reviews within 20 working days of receipt and certainly no later than 40 working days. The additional 20 working days should only be used in the most voluminous and complex of requests.
32. It is noted in this case that DoH took over three months to complete the internal review response. The Commissioner has made a note of this and would like to remind DoH of the importance of the code and in completing internal reviews within the recommended timeframes.

Right of appeal

33. 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

34. 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.
35. 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
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