

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 October 2024

**Public Authority:** NHS Greater Manchester Integrated Care Board (ICB)

**Address:** Tootal Building  
56 Oxford Street  
Manchester  
M1 6EU

### Decision (including any steps ordered)

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1. The complainant has requested information on an independent review commissioned by the ICB into allegations about a GP practice.
2. The Commissioner's decision is that the ICB has demonstrated that section 41 FOIA is engaged in relation to the withheld information and there is no public interest defence to a breach of confidence applicable. The information has therefore been correctly withheld.
3. As the Commissioner has found that section 41 is engaged he has not gone on to consider the other exemptions cited and he requires no steps.

### Request and response

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4. The complainant made a request for information to the ICB on 23 February 2024 in the following terms:  
  
"In October 2023, I raised concerns with NHS Greater Manchester Integrated (NHS GMIC) including specific concerns about false representations by Mr Rob Bellingham [Director of Primary Care and Strategic Commissioning, NHS GMIC].

On 23 October 2023, I received an email from Mr Rob Bellingham in which he stated:

"I am in the process of commissioning an independent review of the matter and this will be progressed as a priority this week."

Four months have elapsed yet no information has been provided regarding the independent review. Basic information such as the terms of reference and who has conducted the review has been withheld. As a public body, NHS GMIC is required to act in an open and transparent manner but it has not done so. There has been an absence of public accountability.

There is an inherent public interest in ensuring that there is openness and transparency in the way that NHS GMIC operates.

Please provide all information regarding the review to which I am entitled, from 10 October 2023 to the present day, including:

1. the terms of reference of the independent review;
  2. the name of the individual/organisation that has conducted the review;
  3. information regarding the outcome of the review."
5. The ICB responded on 22 March 2024. In response to part 2 of the request it confirmed the name of the organisation who conducted the review, Mersey Internal Audit Agency (MIAA). For parts 1 and 3 the ICB cited various FOIA exemptions – sections 36, 40(2), 41(1) and 43(2).
  6. The complainant requested an internal review on the same date. The ICB provided the outcome of its internal review on 24 April 2024 upholding its position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 May 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to determine if the ICB has correctly relied on any of the cited exemptions to withhold the requested information.

## **Reasons for decision**

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### **Section 41 – information provided in confidence**

9. Section 41 allows a public authority to withhold information, that it has received from another person, if publishing the information would be an actionable breach of confidence.

#### **Was the information obtained from another person?**

10. The information in this case is the Terms of Reference (ToR) and final report in relation to an independent review of a GP practice. The review was undertaken by MIAA.
11. The Commissioner is satisfied that the information was obtained from another person and therefore the requirement of section 41(1)(a) is satisfied.

#### **Would disclosure constitute an actionable breach of confidence?**

12. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:
- whether the information has the necessary quality of confidence;
  - whether the information was imparted in circumstances importing an obligation of confidence; and
  - whether disclosure would be an unauthorised use of the information to the detriment of the confider.

#### **Does the information have the necessary quality of confidence?**

13. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. The information in the report isn't trivial – the ICB explained (and the Commissioner has seen) the report contains details on a GP practice including lengthy and detailed information on GP's and financial and contractual information. The information is not otherwise accessible as it was provided to the ICB in confidence and hasn't been published.
14. The Commissioner is therefore satisfied that the information has the necessary quality of confidence.

#### **Was the information imparted in circumstances importing an obligation of confidence?**

15. A breach of confidence will not be actionable if the information was not communicated in circumstances that created an obligation of confidence. An obligation of confidence may be expressed explicitly or implicitly
16. The ICB argues the report was commissioned and provided to it by MIAA in circumstances importing an obligation of confidence. MIAA marked the report as 'In confidence' and provided it to the ICB to give an independent view of the situation.
17. The report contains sensitive information, it identifies individuals and discusses their backgrounds, it refers to patients and contains detailed discussions of contracts and finances. MIAA were provided with documents and correspondence between different combinations of individuals associated with the GP practice and various other health bodies. The report also contains outcomes based on legal input sought by MIAA which would not be expected to be disclosed.
18. The Commissioner is therefore satisfied that the report contains sensitive and confidential information and the information in the report was imparted to the ICB in circumstances importing an obligation of confidence.

**Would disclosure be of detriment to the confider?**

19. The ICB considers disclosure would cause detriment to MIAA and any specific individuals and health bodies who may be identified from the information in the report or have provided correspondence to MIAA to assist in their review.
20. In terms of individuals and/or health bodies who supplied correspondence and contributed to the report, the Commissioner accepts that they would have no expectation that information they provided to MIAA would be disclosed in this way. There is a real possibility that disclosing information based on their contributions may cause detriment to those parties and they may be less likely to voluntarily contribute to independent reviews going forwards.
21. In terms of detriment to MIAA the Commissioner notes that it works with the public sector, primarily the NHS, to provide audit and assurance services. It states that trust is the most important value in its work and its audit services provide access to its knowledge and insights. Part of the report in this case contains opinions and advice based on legal views sought. It is clear MIAA provided the report to the ICB in confidence and there is no suggestion that they expect their reports to be placed in the public domain given the detail and candour contained in the report, particularly in this case in relation to named GP's.

22. The Commissioner has viewed the report and the intention of it is to provide an open, honest and comprehensive independent assessment of the allegations made against the GP practice. He accepts there would be detriment to MIAA if the report were to be disclosed as it may affect the trust MIAA relies on to form relationships with its clients and provide them with frank assurance assessments and audits. Disclosing the report is likely to also impact on the voluntary flow of information that MIAA needs to gather a range of information from third parties to gain a complete picture and reach sound conclusions. The detriment to the confiders who provided information to MIAA, whilst less well-argued, is still a relevant consideration and the possibility of distress cannot be dismissed.

**Is there a public interest defence for disclosure?**

23. Section 41 is an absolute exemption and so there is no requirement for an application of the conventional public interest test. However, disclosure of confidential information where there is an overriding public interest is a defence to an action for breach of confidentiality. The Commissioner is therefore required to consider whether the ICB could successfully rely on such a public interest defence to an action for breach of confidence in this case.

24. The Commissioner recognises that the courts have taken the view that the grounds for breaching confidentiality must be valid and very strong since the duty of confidence is not one which should be overridden lightly. Whilst much will depend on the facts and circumstances of each case, a public authority should weigh up the public interest in disclosure of the information requested against both the wider public interest in preserving the principle of confidentiality and the impact that disclosure of the information would have on the interests of the confider. As the decisions taken by courts have shown, very significant public interest factors must be present in order to override the strong public interest in maintaining confidentiality, such as where the information concerns misconduct, illegality or gross immorality.

25. The complainant argues that the independent review was commissioned because legitimate concerns about maladministration and financial fraud were raised. The review is complete and the complainant states that the Director of Primary Care and Strategic Commissioning for the ICB had sent a letter advising that opportunities for improvement of internal processes had been identified, suggesting that the maladministration concerns had been substantiated by the review.

26. The complainant has also pointed to the widespread knowledge that Greater Manchester's healthcare services are in financial difficulties so there is an inherent public interest in openness and transparency about

the way the ICB operates and disclosing the information in the review is in the public interest. The complainant considers the flaws in the internal processes identified by the review which require improvement are contributory factors to the massive financial deficit.

27. The ICB states that on conclusion of the review the complainant was advised there was no evidence to support the concerns raised or evidence of any unlawful activity.
28. The Commissioner considers that the review in this case and the overarching financial problems facing Greater Manchester's healthcare services are not obviously related. The review is focused on a very specific set of concerns about a single GP practice and the review findings were that there was no unlawful activity. As such the public interest in the information does not extend beyond the principle of openness and transparency.
29. Having considered all the circumstances of this case, and the withheld information, the Commissioner has concluded that there is a stronger public interest in maintaining the obligation of confidence than in disclosing the information. Therefore, the Commissioner finds that the information was correctly withheld under section 41 of the FOIA.
30. He has therefore not gone on to consider the application of the other exemptions.

## Right of appeal

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31. 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)

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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