

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2024

Public Authority: University College London Hospitals NHS Foundation Trust

Address: 250 Euston Road
London NW1 2PG

Decision (including any steps ordered)

1. The complainant has requested information about financial arrangements between SonaCare Medical and University College London (UCL) and University College London Hospitals NHS Foundation Trust (UCLH) and those associated with UCL's and UCLH's use or promotion of Sonablate 500 HIFU.
2. UCLH advised it didn't hold some of the information, disclosed other information and is withholding contract information under section 43(2) of FOIA. This exemption concerns commercial interests.
3. The Commissioner's decision is that UCLH correctly applied section 43(2) of FOIA to the information it's withholding. He has also decided that, on the balance of probabilities, UCLH holds no other further information.
4. It's not necessary for UCLH to take any corrective steps.

Request and response

5. The complainant made the following information request to UCLH on 22 December 2023:

"[1] Please supply full details of the financial arrangements between University College London (UCL) and/or University College London Hospital (UCLH) relating to the partnership agreement entered into between UCL and SonaCare Medical entered into early in May 2013 (or

thereabouts) to create a HIFU Center of Excellence, (see press announcement in 'DI Europe 18th July 2013' refers).

[2] Please provide full details of the financial arrangements in any other contracts or partnership agreements entered into since May 2013 between UCL and/or UCLH relating to physician training, clinical studies, patient satisfaction research and/or technology development in the design, production, use and/or promotion of Sonablate 500 HIFU equipment"

6. On 9 January 2024, the complainant provided UCLH with the press announcement to which they'd referred.
7. On 1 February 2024, UCLH responded to the request. It advised it doesn't hold information within scope of part 1 of the request and provided information relevant to part 2.
8. The complainant requested an internal review on 3 February 2024, as follows:

"Firstly, while dates and the headings of some contracts are supplied, thank you, the response is incomplete. Full details of financial arrangements are missing. Details of lease payments and/or acquisition costs of equipment or consumables and payments under maintenance agreements should have been included.

Secondly, some contracts appear to be missing. As an example, it is well established and reported in a number of research papers by UCLH consultants (attached) that fees for training surgeons (proctoring fees) in the Sonablate 500 Device and consultancy fees have been paid by the manufacturer SonaCare to individual consultants employed by UCLH. There may be other contracts from the potential list included in my Q2"

9. The complainant didn't receive an internal review within the recommended timeframe and submitted a complaint to the Commissioner on 5 June 2024. They said:

"UCLH responded to my request under Q1 stating there is "no information relating to a formal agreement for a partnership". Yet UCLH acknowledge under Q2 they do have both 5 year maintenance and consumables contracts expiring April 2028 and very probably an undisclosed lease agreement for use of the Sonablate 500 equipment. Under Q2, UCLH supply brief summaries of contractual agreements but not the full details of financial arrangements requested...

...In addition to 4 research papers forwarded with my internal review request, I have a further 6, all of which record payments received by UCLH/staff from SonaCare Medical for medical trials, proctoring (fees for training surgeons in the equipment), lecturing, travel/accommodation expenses, medical consultancy etc. These payments were deemed outside the scope of the Trust's Register of Interests Gifts and Hospitality under years 2018 to 2023 (ICO Decision Notice IC-276682-X1R4¹) essentially because staff had failed to record the proper declarations."

10. UCLH provided an internal review on 8 July 2024. Regarding any partnership agreement between UCL and SonaCare Medical, UCLH confirmed that it didn't hold this information. It advised that such an agreement would be between SonaCare Medical and UCL and UCL is a separate legal body.
11. UCLH explained that it had tendered for equipment and maintenance support contracts which were awarded to SonaCare Medical. It said that if the complainant was seeking copies of these contracts, it would need to exempt them, and cost information, from disclosure as disclosing this information would prejudice the commercial interests of UCLH and its suppliers.

Reasons for decision

12. Following UCLH's internal review, the complainant wrote to the Commissioner again, detailing their concerns at that point.
13. They referred to the Commissioner's decision in IC-298424-Z2N7² which concerned the same request sent to UCL. The Commissioner found that UCL didn't hold any relevant information. The complainant is appealing this decision in respect of part 1 of that request. They directed the Commissioner to statements they'd made to support their appeal ie to support their position that UCL does hold information relevant to the first part of the request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029360/ic-276682-x1r4.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030607/ic-298424-z2n7.pdf>

14. However, the current request was submitted to UCLH. The Commissioner will consider whether UCLH holds information about any agreements UCL has with SonaCare Medical.
15. The complainant also disputes UCLH's reliance on section 43(2) of FOIA to withhold information they've requested. The Commissioner will also therefore consider the element of the request that's for contractual and cost information associated with UCLH and SonaCare Medical, and whether UCLH is entitled to withhold this information under section 43(2).
16. The Commissioner will consider UCLH's internal review under 'Other matters.'

Section 1 – right of access to information held by public authorities

17. Under section 1(1) of FOIA a public authority must confirm whether it holds information an applicant's requested and communicate the information, if it's held and isn't exempt from disclosure.
18. The terms of the complainant's request aren't completely clear. The Commissioner understands that part 1 is a request for the financial arrangements between UCLH or UCL, or both, and SonaCare Medical relating to a partnership agreement entered into between UCL and SonaCare Medical in around May 2013 to create a HIFU (High-intensity Focused Ultrasound) Centre of Excellence.
19. The Commissioner understands that part 2 is a request for the financial arrangements in any other contracts or partnership agreements entered into since May 2013 between UCLH or UCL, or both, and SonaCare Medical relating to use the use or promotion of Sonablate 500 HIFU equipment.
20. Part of the complainant's request is therefore for information on agreements and arrangements that UCL has with SonaCare Medical including in relation to Sonablate 500 HIFU.
21. As noted, in its internal review response, UCLH had advised the complainant that UCL and UCLH are separate legal entities. As such, UCLH wouldn't hold any of the information the complainant has requested where that information concerns UCL. The Commissioner accepts that position and is satisfied that UCLH doesn't hold information that concerns UCL.
22. Part of the complainant's request is on agreements and arrangements that UCLH has with SonaCare Medical including in relation to Sonablate 500 HIFU. UCLH advised it didn't hold this information. In its internal

review, UCLH confirmed this position. It said that a link to certain information the complainant had supplied had expired but that other links clearly showed that the partnership agreement the complainant refers to is between UCL and SonaCare Medical. UCL also said that articles the complainant had sent didn't provide evidence that UCLH and SonaCare Medical had any agreements. Instead, these articles suggested that staff members may have received financial support. However, the staff involved also have appointments with UCL and UCLH advised that the financial support they received would be likely to be associated with their positions with UCL.

23. The Commissioner appreciates that the complainant considers that UCLH would hold information on financial arrangements between it and SonaCare Medical associated with a "partnership agreement" that UCL has with SonaCare Medical concerning a HIFU Centre of Excellence.
24. UCLH has confirmed that it hasn't made any financial agreements with SonaCare Medical – about SonaCare Medical's partnership agreement with UCL - and so doesn't hold any information about that partnership, financial or otherwise. And as above, if UCL has entered into such a partnership, it would hold related information itself. UCLH wouldn't hold it as the two bodies are separate legal entities.
25. UCLH has considered the complainant's various arguments and addressed these, maintaining its position that it doesn't hold the information the complainant has requested in part 1 of their request. The Commissioner accepts UCLH's explanation. He's decided that, for the reasons UCLH has given, and on the balance of probabilities, UCLH doesn't hold the information requested in part 1.
26. UCLH has confirmed is that it did tender itself for equipment and maintenance support contracts which were awarded to SonaCare Medical. It therefore does hold further information within scope of part 2 of the request, about those contracts and costs. UCLH has applied section 43(2) to that information and the Commissioner will consider that next.

Section 43 – commercial interests

27. Under section 43(2), information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.

28. When he's considering whether section 43(2) is engaged, the Commissioner considers whether the envisioned harm concerns commercial interests and whose interests would be harmed; how disclosing the information would cause that harm and the level of likelihood of the harm occurring.
29. First, the Commissioner is satisfied that the harm that UCLH envisions is commercial harm and those whose commercial interests would be harmed are the UCLH, and SonaCare Medical.
30. Regarding the second test, in its internal review, UCLH explained that disclosing commercial and cost information about its contracts with SonaCare would give other suppliers an insight into what UCLH is prepared to pay for those services. It says that, potentially:
 - Competing suppliers could work out the service and price structure SonaCare is charging, and any future price competition may be tainted. This would result in less competitive prices for UCLH.
 - Disclosing the information would, or could, adversely affect UCLH's bargaining position during future contractual negotiations, and this would result in the less effective use of public money.
 - Disclosing pricing information may encourage anti-competitive behaviour on the part of other suppliers, restricting the savings that UCLH could make when it renegotiates contracts.
31. The Commissioner is satisfied that UCLH has demonstrated how disclosing the information would or could harm its commercial interests. The Commissioner considers that SonaCare Medical's commercial interests could also be harmed by disclosure. This is because its competitors would have an insight into SonaCare Medical's pricing structure and be able to tailor their own pricing structures accordingly, in future tendering exercises.
32. Finally, the Commissioner has considered the level of likelihood of the envisioned prejudice occurring. UCLH has indicated that it considers that the envisioned prejudice would be likely to happen, rather than would happen. The Commissioner will accept this level of likelihood.
33. Because the tests at paragraph 28 have been met, the Commissioner finds that UCLH correctly applied section 43(2) of FOIA to the second part of the complainant's request. He's gone on to consider the associated public interest test.

Public interest test

34. The complainant has a specific interest in SonaCare Medical. Their interest appears to be focussed on its Sonablate 500 HIFU device and fees and costs SonaCare Medical may have paid to UCLH staff. There is also a general public interest in public authorities such as UCLH being open and transparent about how they're spending public funds.
35. The Commissioner isn't persuaded that these interests outweigh the public interest in UCLH being able to achieve the best value for money in its tendering exercises – because that money comes from taxpayers. There's also greater public interest in SonaCare Medical being able to compete fairly with its competitors and in healthcare providers generally being able to choose services from a range of strongly performing providers.
36. The public interest in UCLH being transparent has been sufficiently met through the information it disclosed. The Commissioner is satisfied that the public interest favours withholding the information in this case.

Other matters

37. Providing an internal review isn't a requirement of FOIA but is a matter of good practice. The Section 45 FOIA Code of Practice recommends that internal reviews are provided within 20 working days of the request for one and in the most complex cases only, within 40 working days.
38. In this case the complainant requested an internal review on 3 February 2023 and UCLH didn't provide one until 8 July 2024. The Commissioner has recorded this delay for monitoring purposes.

Right of appeal

39. 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

40. 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.
41. 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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