

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2024

Public Authority: Drs Lourenco, Stephens, Urquhart, Akanet,
and Cornwall
(GP Partners of Hightown Surgery)

Address: Hightown Gardens
Banbury
Oxfordshire
OX16 9DB

Decision (including any steps ordered)

1. The complainant has requested the amount of money earned from delivering Covid-19 vaccinations. The above public authority (“the public authority”) denied holding some information and relied on section 43 of FOIA (commercial interests) to withhold the remainder.
2. The Commissioner’s decision is that the public authority was not entitled to rely on section 43 of FOIA to withhold the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the amount of money received for delivering vaccines and the date(s) of any payment(s).
4. The public authority 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 28 August 2024, the complainant wrote to the public authority and requested information in the following terms:

“Please provide details of any sums of money the practice may have received for administering the COVID-19 vaccine, along with dates that the money was received.

Were any members of staff working at the practice paid directly and if so please provide details.”

6. The public authority responded on 16 September 2024. It stated that no practice staff had been paid directly. In relation to the first part of the request it directed the complainant towards the payment criteria set out by NHS England, but added that:

“The request for the details of the sums of money received for delivering this service has been rejected. We consider these details to be sensitive business data and we will not be sharing this information.”

7. Following an internal review the public authority wrote to the complainant on 20 September 2024. It stated that “it would prejudice our commercial interests to disclose details of the specific funds received.”

Reasons for decision

8. Based on the wording of its responses, the Commissioner wrote to the public authority on the basis that it had intended to rely on section 43 of FOIA. The public authority confirmed that was indeed the case and provided submissions in support of its position.

9. Section 43 of FOIA allows a public authority to withhold information whose disclosure would harm any party’s commercial interests – including the interests of the public authority itself.

10. The public authority explained that, were the information to be disclosed, it was likely to lose patients. It argued that:

“The practice is a small business, and we can only offer the vaccine to our own patients, revealing the income received for delivering the COVID-19 vaccination programs would inform other larger practices of our market share and they may very well organise themselves to take that market share. The practice chooses to deliver the vaccination programme and offer our own patients the vaccine, but the patient can

choose to have the vaccine elsewhere, such as at a larger practice that is able to offer the vaccine to any patient.

This scenario is likely to happen in our small town, we serve around 9000 patients, however a much larger practice in the town serves around 42000 patients and can offer the national vaccine program and can vaccinate patients from other practices. They have the resources to offer the vaccine on more days and over longer hours than we can, and at weekends and evenings; if they chose to do that to attract our patients, our market share would reduce, and we would lose income and that would prejudice our commercial interests.

There are also commercial pharmacies who compete to deliver the COVID-19 vaccine and who again may position themselves to target our patients deliberately.

Running the COVID-19 vaccination programme takes a lot of work to organise, not just the staffing levels and inviting the patients and the knock-on effect to general appointments, it is also predicting the number of vaccines that are needed, that is a fundamental component. If a competitor is offering a rival service and we lose patients (customers) this would make predicting the numbers very difficult and potentially result in the practice losing money. Over time if we continued to lose patients it may not be cost effective to offer the service at all. This would make accessing the vaccine harder for our loyal patients and would have a negative impact on the practice reputation, again potentially meaning lost income from patients leaving or not joining the practice."

11. The public authority went on to explain that disclosure would damage its reputation because:

"Without any information regarding the running costs of the practice it may be assumed that the funds received were all profit, which would reflect badly on the practice with people who are against the vaccine programme. We would be seen as profiteering."

The Commissioner's view

12. The Commissioner does not consider that the public authority has drawn a causal link between disclosure and a harm that is real and of substance.
13. In particular, the Commissioner has difficulty believing that revealing the amounts paid would cause the public authority to lose patients.
14. The Commissioner does accept that the per vaccination figure NHS England will pay is in the public domain and therefore a person who knew the amount a particular organisation had been paid could use

those two figures to calculate the number of vaccinations delivered. However, even with this figure, it is unclear why patient choices would be affected.

15. The public authority has noted in its response that other, larger, surgeries and pharmacists may be able to offer vaccinations at different times – which some patients may find more convenient. The Commissioner accepts that this may be the case, but it is not clear why disclosure would make other practices more likely to offer vaccines at different times, or patients more likely to get their vaccination elsewhere.
16. There is already a commercial incentive for vaccine providers to offer a service outside of the usual surgery hours if they feel that it would be viable. It is not clear why they would be more or less inclined to offer this provision by knowing how much money the public authority has received. The decisive factor is much more likely to be the usual forces of supply and demand.
17. Similar forces are likely to drive patient choice. Patients are likely to choose their vaccination location based on a variety of different factors including convenience, loyalty to their GP and reputation of the provider. It is difficult to see why knowing how much any provider had received in payments would have any significant effect on that choice.
18. The Commissioner considers that patients are even less likely to switch their GP altogether simply because they know how much was earned from vaccination. It is inevitable that there will be a degree of competition between practices to attract patients and the funding that goes with them. However, that competition happens anyway and it seems unlikely that knowing how much a particular practice was paid would have anything more than a marginal effect.
19. Finally the public authority has resorted to the tired cliché that the public will be unable to understand information. This is an argument that rarely carries weight and does not do so here for two reasons.
20. Firstly, there is nothing to prevent the public authority from providing additional background information if it feels that that would place the requested information in its proper context.
21. Secondly, the Commissioner notes his [model publication scheme](#) for GP practices which suggests that practices should proactively publish:
 - Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit. Current and previous financial year as a minimum; and

- Details on NHS or HSC funding received by the practice – as much information as possible, in as much detail as possible; and
 - Audit of NHS or HSC income; and
 - Details of expenditure items over £10,000 - published at least annually but at a more frequent quarterly or six-monthly interval where practical; and
 - List and value of contracts awarded by the practice, as a minimum for contracts that are of sufficient size to have gone through a formal tendering process.
22. The Commissioner has looked carefully at the public authority's website, but has been unable to find this information. Were it published, the public might already be able to place the withheld information in an appropriate context.

Other matters

23. Had the public authority been entitled to rely on section 43, the Commissioner would have found that its refusal notice was inadequate – breaching section 17 of FOIA.
24. When a public authority is relying on any exemption, to withhold information, or to refuse to confirm or deny that information is held, it must provide the requester with a refusal notice. The refusal notice must state any exemption relied upon, explain why that exemption applies and, where the exemption requires a public interest test, state why the balance of the public interest favours maintaining that exemption. The refusal notice must also inform the requester of any internal review process the public authority operates and of their right to complain to the Commissioner.
25. The public authority's response of 16 September 2024 did none of those things.
26. The internal review did a slightly better job in that it referred to prejudice to commercial interests (thereby inferring that section 43 of FOIA was being relied upon), but still did not specify any exemption, explain why it applied or provide details of the public interest test. Nor did it inform the complainant of her right to complain to the Commissioner.
27. The Commissioner would recommend that the public authority alter its templates for refusal notices so as to ensure that they are compliant with FOIA.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Roger Cawthorne
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