

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 December 2024

**Public Authority:** Dr N O'Brien, Dr T Ninan, Dr A Kirk, Dr C Reid, Dr L Trainor, Dr P Creedon, Dr S Coates, Dr J Megson (GP partners of Coxhoe Medical Practice)

**Address:** 1 Lansdowne Road, Coxhoe, Durham, DH6 4DH

### **Decision (including any steps ordered)**

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1. The complainant has requested Coxhoe Medical Practice (the practice) to disclose a copy of its personal accounts for the year 2022/23. The practice disclosed some information but withheld the remainder citing sections 21 and 43 of FOIA.
2. The Commissioner's decision is that the practice is entitled to apply sections 21 of FOIA to the blue sections of the withheld information. With regards to section 43 of FOIA, it is the Commissioner's decision that the practice is entitled to apply this exemption to the red sections of the withheld information, with the exception of the bank loan interest amounts.
3. The Commissioner also notes that the practice is now willing to disclose the sections of the withheld information highlighted in green.
4. The Commissioner requires the practice to take the following steps to ensure compliance with the legislation.
  - Disclose the sections of the withheld information highlighted in green to the complainant.
  - Disclose the bank loan interest amounts highlighted in red.

5. The practice 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**

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6. On 29 February 2024, the complainant wrote to the practice and requested that it disclose a full copy of its personal accounts for the year 2022/23.
7. The practice responded on 21 March 2024. It refused to disclose the requested information under sections 21 and 43 of FOIA.
8. The complainant requested an internal review on 16 May 2024.
9. The practice carried out an internal review and notified the complainant of its findings on 5 June 2024. It upheld the application of section 43 of FOIA. No reference was made to the initial application of section 21 of FOIA.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way their request for information had been handled. Their correspondence was received on 12 June 2024.
11. The practice provided the Commissioner with a copy of the requested information and highlighted it with three colours – red, green and blue. Red signifies the information it maintains is exempt under section 43 of FOIA. Blue represents the information it considers is exempt from disclosure under section 21 of FOIA. Green highlights the information the practice is now willing to disclose.
12. The Commissioner considers the scope of his investigation is to determine whether or not the practice is entitled to rely on sections 21 and 43 of FOIA in relation to the blue and red redacted sections.

## Reasons for decision

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### Section 21 information accessible by other means

13. Section 21 of FOIA states that information is exempt from disclosure if the information is reasonably accessible to the applicant via other means.
14. The practice advised the complainant in its correspondence to them that the practice income information is available on the NHS website via the following link:  
  
[NHS Payments to General Practice, England 2022/23 - NHS England Digital](#)
15. It has confirmed to the Commissioner that the relevant document is 'NHS Payments to General Practice England 22/23 Practice Level CSV' and the practice's income information is available at row 158. It confirmed that the practice's name is in column H and then the financial information that is redacted from the withheld information in blue is available from row V.
16. The practice said that the complainant raised no concerns at any time over the application of section 21 and whether this information is reasonably accessible to them. It confirmed that the complainant's correspondence has been written on a computer and printed out, so it is satisfied that they have access to the internet and the ability to look up this element of the requested information from the NHS website.
17. The Commissioner notes that no concerns were raised over section 21 of FOIA – in particular if the information is not accessible to the complainant. He feels that if there were access issues, the complainant would have drawn the practice's and the Commissioner's attention to them when requesting an internal review or directing their complaint to the ICO.
18. The Commissioner is satisfied that the redacted information in blue can be accessed as the practice has said via the NHS website. It has also now been more specific as to exactly where this information can be found on the relevant document. There is no requirement to provide information which is otherwise accessible to the applicant under FOIA. For these reasons, he is satisfied that section 21 of FOIA has been applied correctly to this element of the withheld information.

## Section 43 commercial interests

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19. Section 43 of FOIA states that a public authority may refuse to disclose information if its disclosure would or would be likely to prejudice the commercial interests of the public authority or a third party. It is a qualified exemption and so it is also subject to the public interest test.
20. The practice has withheld its bank loan interest under section 43 of FOIA. It has also withheld other details (staffing costs and overall administrative costs) as it considers these details, together with the information it has already provided to the complainant, will enable the complainant to work out the net profit of the practice. It considers the net profit of the practice also engages section 43.
21. Dealing with the latter first, the practice has explained that if the summary of total staff costs and the more detailed breakdown of these was disclosed, the complainant could add this to the already disclosed 'administrative, establishment and other' cost value and calculate the total expenditure of the practice for 2022/23. It stated that because the complainant then has access to the total income of the practice via the NHS published data, they can then deduct the total calculated costs from this total income and work out the net profit or profitability of the practice. The practice argued that it is this profitability figure it wishes to protect, as it considers disclosure of such information would be likely to prejudice its commercial interests.
22. The practice confirmed that staff costs data in the accounts is the largest expenditure. Withholding this data is therefore the only way of preventing the complainant from being able to calculate the total expenses of the practice and use this to then calculate with some accuracy the net profit of the business.
23. For similar reasons the total administrative cost has been redacted, as this can be used together with the already known income of the practice (via the NHS website) to work out the net profit of the practice.
24. The practice outlined how it is operating in a commercially competitive environment given the rise of large private healthcare providers competing for and attaining primary care contracts that were previously run by classical GP lead partnerships. It provided the following link to an article, which it feels highlights this point:  
  
[Private company to take over family-run GP practice in APMS contract - Pulse Today](#)
25. It stated that disclosing the net profits of the practice, or information from which that can be worked out, would be likely to prejudice its

commercial interests. Disclosure could attract the interest of large private healthcare providers into the area, causing increased competition for current and future contractual services.

26. The practice argued that disclosure of the remaining withheld information would be likely to put it at an unfair disadvantage compared to private competitors who may not be required to declare this information when competing for contractual work. It commented that the widespread national occurrences of private takeovers of primary care services makes this a realistic concern and not just theoretical.
27. It argued that negative impacts on competition and the ability of the practice to generate income could ultimately lead to the financial failure of the business and the inability of it to continue practicing. The practice commented that there are examples across the country of practices closing due to financial issues and large scale take-overs of primary care services by third parties.
28. With regards to the bank loan interest, the practice stated that this provides an indication of, or insight into, the financial health of the business and for this reason it would be likely to prejudice the commercial interests of the practice if disclosed. No further details or arguments were provided.
29. Addressing the withheld information from which the net profit of the practice can be calculated, the Commissioner is satisfied that disclosure would be likely to prejudice the commercial interests of the practice and therefore that section 43 of FOIA is engaged.
30. The Commissioner notes that the practice operates in a competitive commercial environment and how disclosure would reveal the financial health of the practice. He accepts that such information would be useful to private businesses looking to takeover and compete for primary care services in the area. The Commissioner considers this is a realistic prospect and a genuine concern of the practice, noting that there have been large scale takeovers of primary care services by third parties and examples of practices closing due to financial issues.
31. A similar request and decision was made in case reference FS50485350 and the Commissioner's decision notice for this case can be accessed here:  
[fs\\_50485350.pdf](#)
32. Paragraphs 34 to 42 highlight why section 43 of FOIA applied to this information.

33. With regards to the bank loan interest, the Commissioner accepts that this information does say something about the financial set up or current picture of the practice. It shows that it has taken out a bank loan and what interest it has been charged. The Commissioner does not consider it is uncommon for practices and businesses to have loans and pay interest for them. Disclosure would also not reveal anything about the financial health, viability or profitability of the business. The other withheld information discussed above does that.
34. The Commissioner has also received very limited submissions addressing this element of the withheld information.
35. In the absence of any arguments to the contrary, the Commissioner has decided that section 43 of FOIA does not apply to this information, and it should be disclosed.
36. As he has found that section 43 of FOIA applies to some of the withheld information, he will now go on to consider the public interest test.

#### **Public interest test**

37. The practice recognised the public interest in openness and transparency and in members of the public being able to see and scrutinise the income and expenditure of the practice.
38. However, it considers the public interest has been met by the information it has already disclosed to the complainant in terms of the income and expenditure for that financial year. Also, the accounts income which is published annually on the NHS website for the practice and the average annual earnings of all GPs in the practice, on its practice website.
39. It decided that the public interest rested in maintaining the application of section 43 of FOIA, as it is not in the public interest to disclose information which would be likely to prejudice its ability to operate and compete in the competitive primary care services sector.
40. The Commissioner acknowledges the public interest in openness, transparency and accountability and in members of the public understanding more closely how the funds and income of GP practices are utilised. Disclosure of the withheld information would enable members of the public to see more clearly the financial health of the business and whether there are any concerns.
41. However, he considers the public interest rests in maintaining the exemption. It is not in the public interest to disclose information which would enable the practice's competitors to utilise that information for their own commercial gain. The practice has explained how practices

across the country are being taken over and therefore targeted by larger private companies. Disclosing the profitability of the practice could encourage other healthcare providers to the area and prejudice the practice's ability to retain its contracts and bid for future contractual services within primary care.

42. The Commissioner notes that although the practice is providing NHS services and receives income from the NHS, it is operating as a business in a commercial environment and competing against other medical providers in the area, some of which are private medical providers. There is a strong public interest in preserving the practice's ability to compete and to make profit, some of which is paid to partners and some of which is reinvested into the business.
43. There is a public interest in the profitability and financial viability of the practice and also in the earnings of public servants such as GPs. However, the Commissioner considers the information already disclosed to the complainant and published on its own website and that of the NHS goes a considerable way to meeting those interests.
44. The Commissioner has decided that the balance of the public interest rests in maintaining the exemption in this case.

## **Right of appeal**

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45. 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)

46. 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.
47. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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