

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 February 2025

Public Authority: Oxford University Hospitals NHS Foundation Trust

Address: John Radcliffe Hospital
Headley Way
Headington
Oxford
OX3 9DU

Decision (including any steps ordered)

1. The complainant has requested contract information from Oxford University Hospitals NHS Foundation Trust (the Trust). The Trust provided some information but withheld part of it, citing sections 43(2) – commercial interests and 40(2) – personal information as its reasons for doing so.
2. The Commissioner's decision is that the Trust cited section 40(2) correctly. He has decided that section 43(2) is engaged but that the public interest favours disclosure of part of the information the Trust has withheld.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Disclose the business case (minus personal data) with the exception of the following parts -
 - p.11 – 5.2
 - p. 12 – 6.2
 - p.13/14 – 7.1 and 7.7
 - pp. 14/15 - 8.1, 8.3, and 8.4

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 22 August 2023, the complainant wrote to the Trust and requested information in the following terms:

“Please provide, preferably in digital format, the following information requested under the Freedom of Information Act 2000.

1. Please provide the following in relation to the Oxford Community Diagnostic Centre (OCDC)

a) a copy of all contracts with Perspectum Ltd, including, but not limited to, all schedules, specifications, and appendices

b) a copy of all contracts, including, but not limited to, all schedules, specifications, and appendices, of any third party providing diagnostic services

c) details of the procurement process that resulted in Perspectum Ltd being awarded a contract to provide services at OCDC

d) details of the procurement process that resulted in a third party or parties also providing diagnostic services at OCDC

e) if the relocation of diagnostic imaging services is/was a project or projects, details of each Project Initiation Document (PID)

f) the full business case pertaining to a diagnostic imaging service relocating to Gemini 1 in Oxford Business Park

g) details of the process used to determine which patients are referred to OCDC.

2. Please provide the following in relation to diagnostic imaging services commissioned by Oxford University Hospitals NHS Foundation Trust (OUHT)

- a) which other outsourced providers provide diagnostic imaging services to OUHT
 - b) details of those services
 - c) and locations where they are delivered.
3. Please provide the following information in relation to in-house provision of diagnostic imaging services
 - a) which in-house diagnostic imaging services the Trust still provides
 - b) details of where they are provided.
4. Please provide a copy of the Data Sharing Agreement between Perspectum Ltd, third party subcontractors and OUHT.
5. Please provide a copy of the Data Protection Impact Assessment/s, covering data sharing between Perspectum Ltd, third party subcontractors and OUHT."
6. On 28 November 2023 the Commission issued a decision notice [IC-265701-P0K8](#) because the Trust has not responded to the information request within the statutory timeframe.
7. The Trust responded on 18 March 2024 as follows:
 - 1 a) Provided information with redactions made under section 40(2) and 43(2) of FOIA.
 - b) The Trust explained that the contract was not held.
 - c) and d) Information provided.
 - e) The Trust explained that, "There was no relocation of diagnostic imaging services".
 - f) The Trust exempted the information under section 43(2).
 1. g), 2a), b), c), 3a), b), 4 – information provided.
 5. Information provided with redaction made under section 40(2).
8. The complainant then made an internal review request concentrating on the length of time it took the Trust to respond, its response to question one and what they felt were confusing reference numbers.

Scope of the case

9. The complainant contacted the Commissioner on 23 July 2024 to complain about the way their request for information had been handled.
10. On 12 November 2024 the Commissioner sent his investigation letter to the Trust, asking to see the withheld information and that the Trust provide its arguments for withholding some of the requested information.
11. On 10 December 2024 the Commissioner had still not received a response from the Trust and he was obliged to issue an Information Notice.
12. The Trust responded to the Information Notice on 9 January 2025.
13. The Commissioner wrote to the Trust after it had responded to ask whether an internal review had been carried out (as indicated in its submission) and some further information released. However, neither the Commissioner nor the complainant had a copy of that review. He also asked for the withheld business case which had not been included in the Trust's submission.
14. On 17 January 2025 the Trust provided its internal review to the complainant and the Commissioner and a copy of the business case. Some further information was released from the contract that had previously been withheld, though it maintained its position regarding other information where it continued to apply exemptions.
15. The Commissioner considers that the scope of his investigation is to look at whether the Trust is entitled to rely on section 43(2) and 40(2) of FOIA as a basis for refusing to provide the withheld information in relation to part one of the request.

Reasons for decision

Section 43(2) – commercial interests

16. The Trust has provided a redacted (the contract version provided to the complainant) and unredacted version of the contract to the Commissioner and the business case. The Trust states that the business case is marked "confidential".
17. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.

18. The Commissioner has defined the meaning of the term “commercial interests” in his [guidance](#) on the application of section 43 as follows:

“A commercial interest relates to a legal person’s ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.”

19. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
20. The Commissioner’s guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests. The actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
21. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a real and significant risk of the prejudice to commercial interests occurring for it to be successfully engaged.
22. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.

The Trust’s view

23. In its response to the complainant the Trust said the details it had redacted contained information about how it assessed fair value for money and details of the commercial interests of both itself and Perspectum Ltd. The Trust has consulted with Perspectum regarding part of its response.
24. In its submission to the Commissioner the Trust explained that the parties whose commercial interests “would be prejudiced” are the Trust and Perspectum. It describes the Trust as:

“...providing care at four hospitals at 100 satellite locations across the region. It is a world renowned centre of clinical excellence that throughout its history has partnered with numerous world leading, innovative organisations of many descriptions, including Oxford University (which is a separate legal entity to the NHS Trust) and the Oxford Biomedical Research Centre to deliver high quality care to its patients, and research to enable the advancement of medical science”.

25. The Trust describes Perspectum as follows:

"Perspectum Ltd is an innovative private medical diagnostics company based in Oxford, specialising the development and deployment of precision health technology. They specialise in advanced imaging solutions such as LiverMultiScan and Cover Scan, providing non invasive detailed insights into liver and multi organ health to aid in the early detection, diagnosis and personalised treatment of chronic illnesses such as liver disease, diabetes and cancer."

26. The Trust and Perspectum have entered into a contract whereby Perspectum delivers a Community Diagnostic Centre in Oxford. It contends that "many details about the governance and finance arrangements for this service are already available to the public in line with the NHS' and OUH's requirements for transparency and accountability".
27. The Trust has claimed the higher level of prejudice, that disclosure of the details it has redacted "would prejudice its [Perspectum's] ability to fairly negotiate similar contracts with other organisations in future".
28. As for the Trust itself, it argues that commercial entities trying to gain information about its financial situation and procurement practices are a large proportion of the FOI requests it receives. It argues that "there is significant interest in the details being redacted" by which the Commissioner understands the Trust to mean that there is interest in the details it has withheld from the contract. Disclosure "would prejudice the Trust's ability to compete in the open market and ensure that it is upholding its responsibility to make efficient use of public money".
29. It outlines the parts in the "agreement" that have been redacted falling within the scope of this exemption: "matters of procurement, including financial commercial terms; performance standards; consequences of termination; benchmarking; and delivery of innovative approaches to healthcare". The Trust's internal review stressed that "having plain sight of or reverse engineer the Trust's positions would hence be prejudicial to its commercial interests".
30. The Trust contends that the disclosure of the "business case" would prejudice its own commercial interests. It contains "detailed discussions of how the Trust goes about its business, particularly financially..." If disclosed, a business seeking to bid to the Trust or any other NHS Trust to deliver services "would allow them to gain an unfair advantage against the Trust on pricing and procurement strategy..." It argues that release of the information it has withheld would be "seriously prejudicial to the Trust's ability to compete in the current health economy and obtain good value for public money".

The Commissioner's view

31. The Commissioner accepts that the disclosure of the withheld parts of the contract under section 43(2) is likely to be prejudicial to Perspectum's and the Trust's commercial interests at the lower level. The withheld information could provide a competitor with financial detail that might cause detriment to Perspectum in present and future bidding for contracts. He also accepts that the disclosure of the business case would be likely to be prejudicial to the Trust's and Perspectum's commercial interests, though this is less compelling. The Commissioner has therefore gone on to consider whether it is in the public interest to disclose or continue to withhold this information.

Public interest in disclosing the information

32. The complainant presented their public interest arguments when they requested an internal review. They suggested that the Trust's control over its assets and the degree of financial freedom it has tip the balance in favour of disclosure. The complainant highlighted Schedule 4 (which the Trust maintained should continue to be withheld at internal review). Their view is that this favours "the commercial interests of a private provider over the Trust's requirement to be transparent and accountable to the public, and put the interests of a private provider over those of the public". Providing the withheld information in Schedule 7 "would reassure the public that public money is being well spent and confirm the integrity of dealings with the supplier and should be provided". They also referred to the redaction of KPIs and the "lack of accountability" though some of that information was released at internal review. Part of Schedule 9 (finance schedule) was also released, the complainant having criticised the "excessive and unnecessary" redaction in order to avoid scrutiny.
33. They describe the business case as a -
- "vital document for enabling the public to evaluate a) the background and drivers for the project, b) whether the project represents value for taxpayers' money, using valid criteria c) the arguments for outsourcing d) the integrity of decisions involving private companies, e) the benefits for patients, and f) the risks for workforce and patient safety".
34. The complainant suggests that this was "a stock response" and "reveals more of the same closed attitude to the principles underpinning the behaviour of public bodies: openness, transparency and accountability". They question the Trust's view that disclosing the business case would have a "long term effect on the Trust's ability to generate revenue for

patient care” as “spurious” and “unsubstantiated” requiring “examination...to corroborate the accuracy and veracity of this claim”.

35. The complainant believes it is in the public interest to -

“provide information about the Trust’s income generation from providing private health treatment. The diverting of already meagre NHS funding to the private sector is becoming increasingly problematic. There is growing evidence to show that failing to build capacity in the NHS risks destabilising it - undermining its role in an already fragile healthcare system – and that diverting NHS funding to private providers has not reduced waiting lists, increases health inequalities, and leads to excess deaths”.

Public interest in withholding the information

36. The Trust’s view is that it has “entered into a contract for Perspectum to deliver a Community Diagnostics Centre in Oxford”. Details about the Trust’s governance and its finances are in the public domain in line with its “requirements for transparency and accountability”.

37. It argues that “The majority of the Trust’s business is conducted in public, with board papers and other relevant documentation published on its website” ([Trust Board Meetings and Papers](#)). The Trust encourages the public to attend meetings and “holds regular public engagement events” where members of the Trust Board take questions from the public.

38. The Trust explains that it -

‘has an increased level of autonomy (and consequent responsibility) about how it spends its money than non-Foundation Trusts, and is required to act as an independent “business” within the health economy, including where it identifies the need to procure services from third parties in the private sector’.

39. Its view is that the exemption -

“outweighs the public interest in disclosure as it contributes to fair commercial competition and investment by companies in, and application of, research and development and innovation in an industry providing significant benefit to public health”.

40. The Trust argues that disclosure would “materially affect” Perspectum’s ability to compete for similar tenders in the future and potentially its current ventures by giving advantage to potential competitors. The innovative approaches being adopted by Perspectum and other

companies may lead to -

“serious consideration of whether it is in their commercial interests to adopt new approaches in NHS settings if their competitors can gain and benefit from this knowledge through the FOIA without their own investment”.

More specifically, in the event of retendering the terms, this “would materially impact the competitiveness of Perspectum’s negotiating position in relation to competing bids”. It could also “materially impact” on the competitiveness of “Perspectum’s negotiating position with its suppliers” and future NHS and private tendering opportunities.

41. The Trust believes that

“...publishing details of how the Trust assesses value for money and what methods it uses to measure and enforce this value and other negotiated contractual details is not in the public interest, as to do so would allow organisations wishing to engage with the Trust on similar projects in future to gain an unfair advantage”.

Balance of the public interest

42. The Commissioner has taken into account that the Trust has stated that the contract is still in place. The Trust has stated it is for three years (p. 69) from 2022. The contract itself appears to have an end date of 2032 – a period of 10 years (p. 200).
43. The Commissioner acknowledges that the Trust has disclosed a great deal of the contract and has only withheld the parts it believes will be detrimental to Perspectum’s or its own commercial interests. Given that the contract could be terminated, the Commissioner has weighed the public interest in obtaining value for money against the complainant’s argument that the degree of financial freedom the Trust has means that transparency is vital. He has also factored in the public interest in allowing Perspectum to remain competitive with its competitors. This decision is finely balanced but he has made the decision that the remaining contract details should not be disclosed.
44. Though he understands that these documents are linked, the Commissioner has decided that the majority of the business case should be disclosed. The Trust has provided very limited public interest arguments for withholding the business case. The complainant’s view that this document should be scrutinised for the reasons given in paragraphs 33-35 is more persuasive. The business case was written some 21 months before the request. Some of the detail was potentially outdated by then, though he accepts that certain parts of the business

case should remain withheld because elements of it reflect the redacted parts of the contract. In making his decision the Commissioner has tried to strike a balance between the complainant's arguments for transparency and Perspectum's commercial interests.

Section 40(2) – personal information

45. This decision notice concerns section 40 of FOIA. Details of this section of FOIA can be found in the Commissioner's [Decision notice support materials | ICO](#).
46. The following analysis considers whether the Trust was entitled to rely on section 40(2) of FOIA. to redact the names of its staff and Perspectum Ltd "as points of contact in relation to certain aspects of the contract".
47. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
48. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
49. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
50. In this case, the withheld information is the names of its and Perspectum Ltd's staff "as points of contact in relation to certain aspects of the contract". They are 'not Chief Officer or Director level and as such are not "public" appointments'. The Commissioner is satisfied that the withheld information is personal data as the information clearly identifies these individuals by name.
51. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
52. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
53. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the

information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

54. The Trust has argued that the members of staff involved are not “public” appointments’ which he takes to mean are not public-facing or of a level of seniority whereby they would “reasonably expect to have their names disclosed to members of the public as part of an FOI”.
55. The Commissioner considers that the complainant is pursuing a legitimate interest in wanting to see the full contract which includes the names and contacts of these individuals. He also notes that the redaction of names is not entirely consistent and includes what he would consider to be senior individuals.
56. Despite this, the Commissioner does not consider that disclosure of the withheld personal information is necessary to meet the complainant’s legitimate interest as these individuals are acting on behalf of the Trust.
57. The Commissioner’s decision is therefore that the Trust was entitled to rely on section 40(2) of FOIA to refuse to provide the information.

Other matters

58. The [Section 45 Code of Practice](#) recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt of the review request.
59. In this case the complainant asked for an internal review on 8 May 2024 but the Trust did not provide an internal review until 17 January 2025, some six months beyond the maximum recommended timeframe.
60. The Commissioner is also concerned by the Trust’s poor communications both with the complainant and himself, whilst acknowledging that the Trust became more prompt in its interactions towards the end of the investigation. Although the Commissioner is aware of the constraints that certain public authorities are working under, he expects the Trust to continue to remedy its tardy communications.

Right of appeal

61. 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

62. 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.
63. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF