

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

### **Decision notice**

**Date:** 9 June 2025

**Public Authority:** Devon Partnership NHS Foundation Trust  
**Address:** Wonford House Hospital  
Dryden Road  
Exeter  
Devon  
EX2 5AF

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

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1. The complainant has requested information about the amount spent on legal fees. Devon Partnership NHS Foundation Trust ('the Trust') relied on section 21 of FOIA (information accessible by other means) to refuse part one of the request. It relied on sections 36(2)(b) and 36(2)(c) of FOIA (prejudice to effective conduct of public affairs) to withhold the information requested in part two of the request.
2. The Commissioner's decision is that the Trust was not entitled to rely on sections 36(2)(b)(ii) nor 36(2)(c) of FOIA to withhold the information requested in part two of the request.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
  - Disclose the information it has relied on section 36 of FOIA to withhold.
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

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5. On 9 September 2024, the complainant wrote to the Trust and requested information in the following terms:

"I am seeking specific information regarding legal fees spent by Devon Partnership NHS Trust (DPT).

To facilitate the process, I have outlined the details of the information I am requesting below:

1. The total amount spent on legal fees paid to professionals and organisations for each year in the past ten years.
  2. The amount spent to date in legal fees spent by DPT in the matter of Jhetam -v- Devon Partnership NHS Trust. This should be broken down into detail."
6. The Trust responded on 3 October 2024. It stated that the information requested in the first part of the request was already accessible by other means and provided a link to the relevant webpage. For the second part of the request, the Trust stated that it was relying on section 36(2)(b) of FOIA (prejudice to the conduct of public affairs) to withhold the requested information.
7. Following an internal review, the Trust wrote to the complainant on 4 December 2024. It maintained its reliance on section 36(2)(b) of FOIA and stated that it also considered section 36(2)(c) to apply to the withheld information.

## Scope of the case

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8. The complainant contacted the Commissioner on 9 December 2024 to complain about the way their request for information had been handled. They expressed dissatisfaction with the Trust's reliance on section 36 of FOIA to withhold the information sought in the second part of the request but did not challenge the Trust's reliance on section 21 of FOIA for the first part of the request.
9. In its submission to the Commissioner, the Trust stated that it considered that section 30(2)(b) of FOIA (investigations and proceedings) and section 42 of FOIA (legal professional privilege) could also apply to the requested information. However, it did not apply these exemptions nor provide the appropriate submissions, so the Commissioner has not considered them as part of his investigation.

10. The Commissioner considers that the scope of his investigation is to determine whether the Trust was entitled to rely on section 36 of FOIA to withhold the information in the second part of the request.

## **Reasons for decision**

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11. Section 36(2) states that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure of the information:
  - (b) would, or would be likely to, prejudice-
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
12. The qualified person (QP) in this case was the Trust's Deputy Director of Safeguarding and Public Protection. The Commissioner is satisfied that this individual is authorised as the QP under section 36(5) of FOIA.
13. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person (QP). The Commissioner's guidance states that a public authority should record who gave the opinion, their status as QP and the dates when the opinion was sought and given. This is the minimum level of information which the Commissioner would expect to see when investigating a FOI complaint.
14. The Trust has not provided the Commissioner with a copy of the QP's opinion itself nor detail of when and how the opinion was sought. It is therefore not clear to the Commissioner if the Trust's explanations of its application of section 36 of FOIA are that of the QP or just the team responsible for providing the response to the complainant. The Commissioner wrote to the Trust to ask it to provide more information about the QP's opinion and how it was obtained but the Trust has not provided this.
15. In its submission to the Commissioner, the Trust explained that the requested information comprises financial information relating to an active legal proceeding concerning fees associated with Mental Health Act assessments and the payment structure within the Trust. The Trust explained that it has reason to believe that the complainant is involved in the legal proceedings and that the requested information would be used to support their arguments.

16. If the Commissioner is prepared to accept that this is the opinion of the QP, he must first consider whether this opinion is a reasonable opinion to hold. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the qualified person in a particular case. The opinion also does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion.
17. The Commissioner only needs to satisfy himself that the opinion is reasonable, or, in other words, it is an opinion that a reasonable person could hold. An opinion will be unreasonable if it is irrational, absurd, fails to identify an applicable interest or fails to explain why the claimed harm would occur.
18. For the QP's opinion to be reasonable, it must be clear as to precisely how the inhibition and prejudice may arise. In his published [guidance](#) on section 36 the Commissioner notes that it is in the interests of public authorities to provide him with all the evidence and arguments that led to the opinion, to show that it was reasonable. If this is not done, then there is a greater risk that the Commissioner may find that the opinion is not reasonable.
19. The Commissioner notes that the withheld information in this case comprises a list of financial transactions with payment date and payment reference information.
20. In terms of section 36(2)(b)(ii), the Trust considers that disclosing the requested information during an active legal process would be highly likely to prevent the free and frank deliberation of the topic in hand. It considers that this, in turn, would likely prejudice the outcome of the proceedings and that this may cause financial implications and impact the effective conduct of public affairs as well as the funding for healthcare interventions under the Mental Health Act.
21. In terms of section 36(2)(c) of FOIA, the Trust explained that it has a structured set of fees for paying doctors to complete a Mental Health Act assessment, and that this follows recommended guidance. The Trust therefore makes the budget provision annually to fund these assessments. It explained that the Trust is currently in NOF4 status, which means it is receiving intensive support from NHS England but also has higher reporting requirements and scrutiny levels concerning its budgets and spending. The Trust considers that disclosing the requested information during a live proceeding could lead to budget allocations for other services being diverted and those services then being negatively impacted.
22. Despite giving the Trust more than one opportunity to provide it, the Commissioner has not been provided with sufficient detail in the Trust's

submission to clearly identify if the arguments presented are the opinion of the QP. Similarly, he has not been provided with sufficient detail and explanation to persuade him that the prejudice and the inhibition described by the Trust would or would be likely to occur.

23. Consequently, due to the lack of detail as to how such prejudice and inhibition may occur, the Commissioner cannot conclude that the QP's opinion is reasonable. He therefore concludes that the section 36(2)(b)(ii) and 36(2)(c) exemptions are not engaged in this case.
24. As the Commissioner finds that the cited exemptions at section 36(2) are not engaged, it is not necessary for him to consider the associated public interest tests.
25. The Trust should now disclose the information requested in part two of the request.

## Right of appeal

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26. 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)  
General Regulatory Chamber,  
PO Box 11230  
LEICESTER,  
LE1 8FQ

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)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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