

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2024

Public Authority: Aneurin Bevan University Health Board
Address: St Cadoc's Hospital
Lodge Road
Caerleon
Newport
NP18 3XQ

Decision (including any steps ordered)

1. The complainant has requested information about GP provision, including the budgets for managed practices. The above public authority ("the public authority") relied on section 43 of FOIA to withhold the requested information.
2. The Commissioner's decision is that the public authority was not entitled to rely on section 43 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the budget and spend information, for the five practices directly managed by the public authority as of 1 January 2024, for the financial years specified in the request.
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 19 April 2024, the complainant wrote to the public authority and made a request for information which included the following:

"I would like to request the following information for the financial years 2021/22, 2022/23, 2023/24 broken down per year:

...

7) Per managed practice, the budget allocation and spend (including variance) on GMS contract for each given year.

..."
6. The public authority responded on 20 May 2024. It provided most of the information and relied on section 12 of FOIA (costs) to refuse one part of the request. In respect of part 7, it relied on section 43 of FOIA to withhold the requested information – a position it upheld following an internal review.

Scope of the case

7. When complaining to the Commissioner, the complainant referred specifically to the public authority's reliance on section 43. The Commissioner wrote to the complainant stating that he only intended to investigate the public authority's reliance on section 43 of FOIA in respect of part 7 of the request. The complainant did not object to this proposal.
8. The Commissioner considers that the scope of his investigation is to determine whether the public authority was entitled to rely on section 43 of FOIA to withhold the information sought in part 7 of the request.

Background

9. The public authority explained to the Commissioner that there were 68 General Practices within its area. Prior to 2024, five of these practices had been managed directly by the public authority – with the remaining 63 managed by independent contractors.
10. During 2024, the public authority had transferred the five practices it managed directly to independent contractors – meaning that, as of 1 April 2024, all 68 practices were now managed independently.

Reasons for decision

11. Section 43 of FOIA allows a public authority to withhold information whose disclosure would harm its commercial interests or those of any other party.

12. The public authority explained to the Commissioner that:

“Should a practice become vacant for whatever reason in the future, the Health Board follows the process set out in its General Medical Services Vacant Practice Policy when considering the commissioning of a GP partnership to a vacant practice. In line with the Board’s decision taken in January 2024, its preference is to pursue the option to fill any vacancy under the National Health Services (General Medical Services Contracts) (Wales) Regulations 2004 wherever possible, with returning a practice the managed practice or dispersing registered lists as an absolute last resort.

“In considering the context set out and the complaint, I have considered the prejudice to both the Health Board and any potential contractors in the future. I believe that there is a risk that release of the sensitive information would prejudice the Health Board’s ability to negotiate in a commercial environment and attract unique bids for any future contracts for practices that may become vacant. As a result, this would reduce the Health Board’s ability to obtain value for money and may result in a less advantageous outcome for the taxpayer in that, competitors would be able to take advantage of our budget allocation arrangements, causing detriment to one bidding contractor over another depending on whether they may or may not have accessed the disclosed information, and this would not be in the public interest.”

The Commissioner’s view

13. The Commissioner is not persuaded that the public authority has drawn a causal link between disclosure and harm to any parties commercial interests.

14. The public authority explained that it had concluded its tendering process in January 2024, with the transfer of all five managed practices being completed prior to 1 April 2024. Therefore, when the request was responded to on 24 May 2024, there was no possibility that disclosure could have harmed that negotiating process – because it was already complete.

15. The public authority is arguing that disclosing this information would harm its ability to negotiate similar deals in future. However, its arguments are speculative.
16. Given that these five contracts have only just been agreed, it seems unlikely that, barring an unforeseen event, they are likely to be re-tendered in the immediate future. The public authority has not provided any indication that any of these contracts are likely to require re-tendering any time soon.
17. In the Commissioner's view, by the time these contracts are likely to be re-tendered, the information is likely to be of little use as it will reflect a time when each practice was under different management. Furthermore, the request seeks information about 2021/22 – a time when every GP practice's finances will have been distorted by the effects of the Covid-19 pandemic and, in particular, the national vaccination programme.
18. There is a small possibility that a contract may have to be re-tendered sooner and at short notice, for example if a contractor became insolvent. However, even in that scenario, the Commissioner is sceptical that having this information in the public domain would be of use – given that the main objective (if the public authority were to re-tender in such circumstances) would be to ensure continuity of service.
19. However, given that the contracts had only just been agreed and that the public authority's due diligence should have covered each contractor's financial position, the Commissioner does not consider that the risk of a contractor becoming imminently insolvent was more than hypothetical possibility at the point the request was responded to.
20. Finally, the Commissioner would draw the public authority's attention to [recent decisions](#) he has [issued](#), which make clear that he expects GP practices to make financial information available as part of their [publication scheme](#) (also available [in Welsh](#)). The Practices concerned should have already been publishing financial information under their old management structure and should continue to do so now if they wish to comply with section 19 of FOIA. No prejudice should arise from publishing information that should be in the public domain anyway.
21. The Commissioner is therefore not satisfied that section 43 of FOIA is engaged and so the information must be disclosed.

Right of appeal

22. 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

23. 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.
24. 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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