

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2024

Public Authority Address: Leeds Teaching Hospitals
NHS Trust
The Leeds Teaching Hospitals
NHS Trust Headquarters
St James University Hospital
Beckett Street
Leeds
LS9 7TF

Decision (including any steps ordered)

1. The complainant has requested information relating to private finance initiatives and private finance projects. Leeds Teaching Hospitals NHS Trust ("the public authority") disclosed information, but also withheld information under section 43(2).
2. The Commissioner's decision is that the exemption is engaged but that the public interest lies in disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
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 29 July 2024 the complainant made the following request for information under FOIA:

"Please could you provide the following information regarding your current Private Finance Initiative (PFI) and Private Finance 2 (PF2) projects.

1. The name of the project or contract.
2. The name of the private sector provider for the project/contract.
3. The contract start date.
4. The contract expiration date.
5. The total level of debt outstanding.
6. The total amount paid out on the contract over the last five financial years broken down by total debt repayments and total interest repayments.

I am requesting this information on behalf of EveryDoctor."

6. On 19 August 2024, the Trust responded and disclosed information in response to parts 1 – 6 of the request.
7. The complainant requested an internal review on 27 August 2024. They explained that they'd requested a breakdown for each PFI and PF2 projects, which hadn't been provided in response to parts 5 and 6 of the request.
8. The Trust provided the outcome to its internal review on 22 October 2024. It confirmed holding the breakdown requested but withheld it under section 43(2) (commercial interests).

Scope of the case

9. The complainant contacted the Commissioner on 28 October 2024 to complain about the way their request for information had been handled, specifically the public authority's refusal to disclose the breakdown requested.
10. The Commissioner will consider whether the public authority was correct to withhold the information it has done.

Reasons for decision

Section 43(2) – commercial interests

11. Section 43(2) of FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
12. The Commissioner's guidance¹ states '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.'
13. In order for section 43(2) to be engaged, there must be a causal link between the prejudice envisaged and the actual information being withheld.
14. To reiterate, the public authority has disclosed the total level of debt outstanding, for both PFI and PF2 projects, as of 31 March 2024, which is £277 million. It also disclosed the total amount paid on the contracts, for both PFI and PF2 projects, which is £15 million, with an interest of £13 million.
15. As part of this investigation, the Commissioner has seen the breakdown that's being withheld in this instance. It breaks down the total level of debt between projects and also breaks down the debt repayments, and interest repayments, for each project, for the last five years.
16. The public authority has explained:

"Disclosing the information would disadvantage the Trust in future dealings for any potential future purchases. It would place suppliers at distinct commercial advantage when negotiating and therefore prejudice our ability to engage in future commercial activities. It would also allow potential suppliers an insight into our methodology and proprietary information they would otherwise not have considered in their offering."
17. The Commissioner has considered the withheld information and the public authority's arguments and he's satisfied there's a causal link between the breakdown being requested and the public authority's commercial interests.

¹ [Section 43 - Commercial interests | ICO](#)

18. In October 2018, the government announced that it would no longer use the private finance initiative model. However, this doesn't mean that the requested breakdown couldn't be used by a supplier to tailor its pitch to the public authority, for any similar project. It just couldn't be used by a borrower, in a similar pfi initiative, in the same way since these initiatives no longer exist.
19. In its internal review outcome, the public authority explained to the complainant that disclosure 'would also prejudice the commercial interests of a third party (for example, the ability of providers to successfully participate in commercial activities).' In the same way disclosure could be used by a supplier to gain an upper hand in negotiations with the public authority, it could also be used by other organisations in negotiations with the lenders.
20. With that in mind, the Commissioner is satisfied the exemption is engaged. Section 43(2) is a qualified exemption which means it's subject to the public interest test.

Public interest test

Public interest in disclosure

21. The public authority has identified the public interest 'particularly in terms of ensuring that the Trust as a public authority is accountable on how it receives spends public money and that the money is invested wisely.'
22. The above is the only specific public interest argument the public authority has provided; the rest are generic public interest arguments about transparency, accountability, ensuring good-decision making, securing the best use of public resources and upholding standards of integrity.
23. There is a public interest in private finance initiatives, where private companies provide contracts to undertake NHS work. In this instance, the public authority has disclosed there are two such initiatives: Wharfedale hospital and St James University Hospital - Bexley Wing.
24. Private finance initiatives in the NHS have been widely criticised² for their high interest payments, which in turn means there is less money being spent on patient care. There are concerns that private finance

² [NHS hospital trusts paying hundreds of millions in interest to private firms | Private finance initiative | The Guardian](#)

repayments are a major drain on hospital budgets, during a time of severe upcoming budgetary challenges.

25. There are also concerns that private finance projects are costly to the public sector but beneficial to the private sector; disclosure would demonstrate the amount of interest being paid (and public funds effectively lost), in proportion to the funding received for Wharfedale Hospital and the Bexley Wing.

Factors in favour of maintaining the exemption

26. In favour of maintaining the exemption, the public authority has repeated its arguments at paragraph 16.

27. It's elaborated that:

"The Trust is of the opinion that the resultant harm should this information be released, would be substantial in securing the best use of public resources, good decision-making by public bodies and in ensuring fair commercial competition in a mixed economy."

28. And also that:

"The Trust is cognisant that the sensitivity of information is likely to reduce over time; therefore, the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information."

Balance of the public interest

29. The Commissioner has determined that the balance of the public interest lies in disclosure, for two main reasons. Firstly, he believes that the public authority has overestimated the prejudice to commercial interests that could occur and secondly, the public authority has underestimated the public interest in the requested information.
30. The Commissioner has accepted the exemption is engaged because, to a certain extent, it places into the public domain monetary details of how the third party charges, and what the public authority will pay, for the projects in question. This could affect either parties ability to negotiate commercially in the future for projects of a similar scale.
31. However, the Commissioner also notes that the withheld information specifically relates to a private finance initiative, which is a model which is no longer used in the U.K by the NHS. The public authority cannot borrow money from this lender, or similar lenders, in this way again.

Similarly, this lender can't enter into a similar arrangement with NHS trusts again. For this reason, the Commissioner considers the prejudice to either parties commercial interests is more minimal than the public authority envisages.

32. Furthermore, contrary to what the public authority is saying, the Commissioner believes that the public interest in the requested information is at its highest now, at a time when these interest payments are actually occurring, public money is being diverted away from hospitals and back towards these private lenders.
33. For this reason, the Commissioner has determined the public interest lies in disclosure.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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