

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

### **Decision notice**

**Date:** 16 January 2025

**Public Authority:** Royal Free London NHS Foundation Trust  
**Address:** Royal Free London Group Headquarters  
Anne Bryans House  
77 Fleet Road  
London  
NW3 2QH

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

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1. The complainant has requested the dates of the most recent exercises carried out in line with the NHS England Emergency Preparedness, Resilience and Response (EPRR) Framework. Royal Free London NHS Foundation Trust ('the Trust') relied on section 31(1)(a) of FOIA (law enforcement) to refuse the request.
2. The Commissioner's decision is that the Trust was not entitled to rely on section 31(1)(a) to withhold the requested information.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
  - Disclose the requested 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**

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5. On 3 June 2024, the complainant wrote to the Trust and requested information in the following terms:

"I request:

1. The date of the Trust's own most recent communications systems exercise. I am not requesting the date of any communications systems exercise initiated by another organisation.
2. The date of the most recent table-top exercise.
3. The date of the most recent live play exercise. I am aware the NHS EPRR Framework states that if an organisation activates its plan then this replaces the need to run a live exercise "providing lessons are identified and logged and an action plan developed". Nevertheless I request the date of the most recent live play exercise, not activation of the plan.
4. The date of the most recent command post exercise. I am aware the NHS EPRR Framework states that if an organisation activates its Incident Coordination Centre then this replaces the need to run command post exercise "providing lessons are identified and logged and an action plan developed". Nevertheless I request the date of the most recent command post exercise, not activation of the ICC.
5. The date of the most recent Incident Coordination Centre equipment test."
6. The Trust responded on 28 June 2024. It stated that it held the requested information but it was relying on section 31(1)(a) of FOIA to withhold it.
7. Following an internal review, the Trust wrote to the complainant on 30 August 2024. It maintained its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 2 September 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the Trust was entitled to rely on section 31 of FOIA to withhold the requested information.

## Reasons for decision

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### Section 31 – law enforcement

10. Section 31(1)(a) of FOIA says that:

“Information .... is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime....”

11. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.

12. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.

13. In order to engage a prejudice based exemption such as section 31, there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. Three criteria must be met in order to engage a prejudice based exemption:

- First, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Second, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – that is, disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.

### The Trust’s position

14. The Trust considers that an individual planning an attack on the Trust could use the requested information to gain an understanding of an organisation’s preparedness by identifying potential opportunities to exploit an attack.

15. The Trust explained that there have been recent warnings from the government about attacks on Critical National Infrastructure, which includes the NHS. The Trust therefore does not wish to disclose information that could be useful in understanding the preparedness of services relating to its estate, facilities, IT, and clinical services.
16. The Trust has explained that it is critical that it can protect its infrastructure to avoid being made a target for attackers. It explained that if the Trust was subject to an attack, this could affect the safety of patients, staff, and members of the public. It could also affect the level of care that the trust is able to provide for patients. This is because attacks could lead to appointment or procedure cancellations, as seen with the Synnovis cyber-attack on London NHS organisations in 2024 where 1,693 elective procedures and 10,054 acute outpatient appointments were postponed.
17. The Trust added that any NHS organisation that hasn't carried out the EPRR exercises in the recommended frequency could more likely to be targeted and have its functions disrupted by an attack.
18. The Trust considers that disclosure of the requested information 'would be likely' to have a prejudicial effect.

### **The complainant's position**

19. The complainant has argued that:

"The minimum frequency with which NHS Trusts in England should perform EPRR exercises is publicly stated in NHS England's EPRR Framework, the most recent edition of which was published in 2022. If the Trust has performed exercises at at least that minimum frequency then the disclosure of exercise dates will not increase the Trust's vulnerability. If the Trust has not performed exercises at that minimum frequency then the Trust's vulnerability is already increased and refusing my request will not mitigate that vulnerability significantly."
20. The complainant has explained that they have requested the same information from a number of NHS trusts and, to date, 119 of 122 trusts have provided the requested dates.

### **The Commissioner's view**

21. The Commissioner has considered the arguments put forward by the Trust, both in its correspondence with the complainant and in its submission.
22. The Commissioner acknowledges that disclosure of the details and outcomes of exercises designed to test the efficacy of an organisation's

response to different emergency incidents could reveal information about potential weaknesses, or areas of opportunity, for individuals planning an attack on an element of an organisation's infrastructure.

23. However, the complainant has not requested the detail of these exercises. The request only concerns the dates of when the most recent exercises have been carried out. The Commissioner is not convinced that the date itself holds the same level of potential harm as the detail of the exercises themselves and their outcomes.
24. With respect to the likelihood of harm occurring, he accepts that the Trust considers that harm would be likely occur as a result of disclosure.
25. However, the Commissioner is not satisfied that the Trust has adequately demonstrated a causal link between disclosure of the information it confirmed it holds and the harm it has identified.
26. The Commissioner understands that the NHS EPRR framework guidance sets out how often the different EPRR exercises should be carried out. The types of exercises are categorised by communication system exercise, table-top exercise, live play exercise, command post exercise and ICC equipment test. The framework outlines what each type of exercise should test, but the scenario or incident used in the exercise is decided by the NHS organisation itself.
27. The Commissioner agrees that disclosing the date of each type of exercise would show whether the Trust is complying with the recommended frequency guidelines set out in the framework. However, the date information alone would not reveal any detail about the exercise, the scenario tested, the outcomes, any lessons learned or indeed, any areas of weakness.
28. The Commissioner considers that, if an NHS organisation has failed to meet the recommended minimum frequency for carrying out these exercises, it's that failure that presents the greater risk, not a disclosure. Indeed, if the risk level were as high as the Trust claims, disclosure of this failure should cause an NHS organisation in that position to bring forward plans for such an exercise, so as to reduce its risk level.
29. The Commissioner notes that the complainant has sent the same request to a large number of NHS bodies and that they have received the requested information in almost all responses. In its internal review response, the Trust stated that the "responses of other trusts have no bearing on whether the trust can provide this information". While the Commissioner agrees that the Trust should use its own judgement when determining whether it can disclose information, he cannot ignore the

fact that so many other NHS bodies have chosen to disclose the requested information. The Trust has not offered any evidence that would suggest that it is at greater risk than other similar bodies that have felt able to disclose the same information. He finds that this lends further support to his view that high level information concerning dates does not engage the exemption.

30. On the evidence provided, and considering that the request only concerns date information, the Commissioner is not satisfied that the Trust has demonstrated that the exemption provided by section 31(1)(a) is engaged.
31. Having reached this conclusion, it has not been necessary to go on to consider where the balance of the public interest lies.

## Right of appeal

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32. 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)

33. 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.
34. 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**