

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2020

Public Authority: Business Services Organisation

Address: 2 Franklin Street
Belfast
BT2 8DQ

Decision (including any steps ordered)

1. The complainant has requested information from the Business Services Organisation (BSO) regarding the weighting of a GP Practice's patient list for the purpose of payments for general medical services. The BSO refused to disclose the information, citing section 43(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the BSO has correctly applied section 43(2) of the FOIA to the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 4 February 2019, the complainant wrote to the BSO and requested information in the following terms:

"I am writing to you to make a request under the Freedom of Information Act for information regarding the weighting of a Practice's patient list for the purpose of payments for general medical services. For example, within our Practice based on our remittance sheet for January 2019, our actual list size on 1 January was 7746 and our weighted list size for 1 January was 6495. I would like to have the same information for all the practices under the Board. The Practice number, e.g. Crumlin Medical Practice is N303; this would be sufficient to name each practice."

5. The BSO responded to the complainant on 27 March 2019 and refused to disclose the requested information, citing section 43(2) of the FOIA as a basis for non-disclosure. The complainant sought an internal review of that decision on 29 April 2019. The response to the internal review request was issued on 9 July 2019 and the reviewer upheld the original decision.

Scope of the case

6. The complainant complained to the Commissioner on 24 July 2019 about the way the BSO had handled his request and in particular its application of the exemption as set out at section 43(2) of the FOIA.
7. The Commissioner has considered the BSO's handling of the complainant's request and in particular its application of section 43(2) of the FOIA to the requested information.

Reasons for decision

Section 43(2) – prejudice to commercial interests

8. Section 43(2) of the 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).
9. For section 43(2) to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed must relate to the commercial interests;
 - Secondly, 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 to those commercial interests; and
 - Thirdly, it is necessary to establish whether the alleged prejudice would, or would be likely, to occur.

10. The Commissioner's guidance explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or services. In this case, the withheld information relates to payments to GP practices for general medical services. The Commissioner, having perused the requested information, is satisfied that it relates to the purchase and sale of services and is therefore commercial.
11. The BSO has argued that disclosing the payments made to individual GP practices would be likely to prejudice the commercial interests of both the Health and Social Care Board (HSCB) and the GPs themselves. GPs are independent providers of services and are not employees, partners or agents of the HSCB.
12. It is therefore necessary to consider whether the BSO has demonstrated that disclosing the requested information would cause the commercial interests of both the HSCB and the GP practices to be prejudiced.
13. In relation to the commercial interests of third parties it is not appropriate to take account of speculative arguments which are advanced by public authorities about how any prejudice may occur. Whilst it may not be necessary to explicitly consult the relevant third party, the Commissioner expects arguments advanced by the public authority to be based on its prior knowledge of the third party's concerns.
14. The BSO states that the HSCB has advised that release of the requested information into the public domain would detrimentally impact the relationship that the HSCB has cultivated with the British Medical Association (BMA) and GPs at a time when the weight of that relationship is increasingly fundamental to the HSCB discharging its legal functions and delivering responsive GP services to increasing numbers of patients across Northern Ireland. General Practice age profiles in Northern Ireland confirm that there is expected to be increasing capacity issues as the GP population ages. It is forecast that there will be a reduction in GP numbers (i.e. through retirements).
15. The BSO further states that the HSCB is already at a disadvantage in commercial negotiations as there is no contractual obligation on GP providers to absorb additional demand under the existing General Medical Services contract. The HSCB therefore relies on the good will of GPs to *freely* engage with them to quickly and seamlessly absorb displaced patients and gaps in provision of service as they are encountered, in an environment where filling vacant GP places is increasingly not possible. The HSCB has recognised the flexibility and a willingness to work with the HSCB by GPs to manage increasingly

complex pressures being experienced as the GP workforce experiences unavoidable realignments. Disclosure of the requested information would prejudice the willingness of GP practices to work with the HSCB in such a free and flexible manner.

16. The HSCB has also engaged with the Northern Ireland General Practitioners Committee (NIGPC), which is a standing committee of the BMA and represents all General Practitioners operating in Northern Ireland. This standing committee's remit is to consider and act in matters affecting those engaged in General Practice in Northern Ireland, which extends to contractual matters. The concerns raised by the HSCB have been echoed by the BMA through the NIGPC Chair, who strongly focuses on the importance of the goodwill currently enjoyed, and notes that there would be a detrimental impact to that relationship if the information were to be released. Given his position as chair of NIGPC, the BSO argues that it is reasonable to therefore assume that his views are representative of those of the 1349 GPs operating in Northern Ireland who provide GP services to a combined practice list of almost two million patients.
18. In order to accept that the exemption is engaged the Commissioner usually requires evidence of a causal link between the information in question and the alleged prejudice argued. This is usually easier to argue where an issue is ongoing. The BSO has stated that disclosure of the requested information would enable anyone to determine how much of the global sum payment is given to each identified GP contractor. In the view of the HSCB, this would be detrimental to the good working relationship between the HSCB and GPs which would be likely to affect the delivery of services by the GP practices. The Commissioner accepts that there is therefore a direct causal link between disclosure of the requested information and the prejudice caused to the commercial interests of both the HSCB and the GP practices.
19. The Commissioner therefore considers that section 43(2) of the FOIA was correctly engaged and she has gone on to consider the public interest test in this case.

Public interest arguments in favour of disclosure

20. There will always be some public interest in disclosing information which would promote transparency and accountability of how a public authority operates in its decision-making and in its expenditure of funds. The BSO recognises this and the Commissioner gives significant weight to this as a public interest factor in favour of disclosure of the requested information.
21. The complainant is of the view that disclosure of the requested information would be in the public interest as it would ensure that the public is aware that a primary care service is being provided which is funded fairly and equitably.

Public interest arguments in favour of maintaining the exemption

22. Clearly the ability to access such health services is strongly in the public interest and anything which would cause detriment to this would not be in the public interest.
23. The BSO states that the current good working relationship that the HSCB has cultivated with its GP Partners over many years facilitates and enables the HSCB to meet its legal obligations and core functions: namely ensuring the delivery of high quality and equitable access to health services to the resident population of Northern Ireland. Disclosure of the requested information would colour that relationship and would have a direct and immediate impact on business function and ultimately patient experience. Of further significance, the BSO states that it should be noted that any detriment to the relationship between HSCB and GPs, would have a direct impact on patients' ability to access responsive health services. Clearly the ability to access such health services is strongly in the public interest and anything which would cause detriment to this would not be in the public interest.
24. The argument that the public interest rests in maintaining the relationship which currently sees HSCB and General Practices work on a collegiate basis to manage capacity issues is a strong one and carries significant weight in the Commissioner's view.

Balance of public interest arguments

25. The Commissioner has considered the public interest arguments both in favour of disclosure and of maintaining the section 43(2) exemption. She considers that the ability of the public to directly access responsive health services is extremely important and does not consider that it would be in the public interest if this were impacted in any way.
26. The Commissioner also notes that the BSO is prepared to discuss the matter with the complainant and provide further views and detail regarding it.
27. The Commissioner therefore considers that, in all the circumstances of the case, the public interest is in favour of maintaining the exemption.

Right of appeal

28. 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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.

30. 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

**Deirdre Collins
Senior Case Officer**

Information Commissioner's Office

Wycliffe House

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Wilmslow
Cheshire
SK9 5AF**