

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2022

Public Authority: Liverpool University Hospitals NHS Foundation Trust

Address: Lower Lane
Fazakerley
Liverpool
L9 7AL

Decision (including any steps ordered)

1. The complainant has requested Liverpool University Hospitals NHS Foundation Trust (the trust) to disclose detailed expenditure for the month of March. The trust disclosed some information but withheld the remainder citing sections 40 and 43 of FOIA.
2. With regards to items 1 and 3 of the request, the Commissioner is satisfied that these are not valid requests for information in accordance with section 8 of FOIA. In respect of item 2, he is however satisfied that the trust is entitled to withhold the remaining withheld information under sections 40 and 43 of FOIA. He therefore does not require any further action to be taken.

Request and response

3. On 8 June 2022, the complainant wrote to the trust and requested information in the following terms:

"1. Thank you for your response to FOI 8216 – is there some reason why it is taking so long to release this information? If so can you please explain what the problems are thanks?

2. Further I am still not happy with the lack of detail – can you please provide itemised detail the following for the March release thanks? I would expect there to be a simple download from your purchasing system.

3. To be clear my email was a complaint and appeal i.e. a belief that the monthly data should release more information than released as standard in the past not a request for new information."

4. The trust responded on 6 July 2022. In respect of item 1 the trust said that it does not hold or collate that information. Regarding item 2, it disclosed 24 documents containing 35 invoices itemised by supplier with some information redacted under section 40 and 43 of FOIA. For item 3 the trust advised the complainant that it does not record or collate the requested information.
5. The complainant requested an internal review on 7 July 2022. He stated that he wished to challenge all information redacted. He also requested details of the contracts outlined in the invoices or for the trust to, otherwise, detail what actual goods and services were provided for the sums involved. He also disputed that the trust does not hold any recorded information on how it was processing his earlier information request and wished to complain about the trust's reference to section 14 (vexatious request) of FOIA.
6. The trust carried out an internal review and notified the complainant of its findings on 28 July 2022. It upheld the application of the exemptions cited. In respect of the complainant's request for the details of contracts outlined in the invoices or more detail on the actual services and goods provided for the sums involved, the trust informed the complainant that this was a new request for information. It allocated it a separate reference number and advised the complainant that it would respond in due course.

Scope of the case

7. The complainant contacted the Commissioner on 29 July 2022 to complain about the way his request for information had been handled. He stated that he felt the trust should hold some detail on the processes undertaken whilst processing his earlier information request. He also reiterated that he requires to know what the items are or the services provided in relation to the invoices disclosed in response to his earlier

request. Additionally, he said the trust should hold documentation on what they are purchasing and the timing of releasing its transparency reports.

8. The Commissioner has considered the validity of items 1 and 3 of the complainant's request under section 8 of FOIA. He has also considered the application of section 40 and 43 of FOIA to the information redacted in relation to item 2.
9. The Commissioner agrees with the trust that the complainant's request for details of the contracts outlined in the invoices or for the trust to, otherwise, detail what actual goods and services were provided for the sums involved, did not form part of his original request. This was a new request for information which was rightfully processed as such. This notice is limited to the request of 8 June 2022 and the specific wording of items 1 to 3 outlined above.
10. Regarding the trust's reference to section 14 of FOIA, this was referred to in connection with item 3 of the complainant's request. Item 3 is not a valid information request under FOIA (please see the section below which will explain why in more detail). The trust's reference to section 14 of FOIA cannot therefore be considered.

Reasons for decision

Section 8 – request for information

11. Section 8 of FOIA states any reference to a "request for information" is a reference to such a request which –
 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) described the information requested.
12. The Commissioner does not consider items 1 and 3 are valid requests for information. They do not request recorded information the trust may hold or describe recorded information they wish to receive. Item 1 is about the complainant's earlier request and his dissatisfaction over how long it was taking for the trust to release the invoices to him. He asked the trust to confirm why it was taking so long and explain what the problems were. This is a request for an explanation over the length of time it was taking the trust to disclose the invoices; he is asking the trust to explain why it was taking so long and why there was a problem

in disclosing them, in his opinion, in a more timely fashion. This is a question, asking the trust to explain the delay. It does not describe recorded information the complainant wish to be provided.

13. Similarly item 3 is statement saying that the complainant was making a complaint over the monthly transparency data currently disclosed and, in his opinion, the need for more detail in these disclosures. It is not a request for recorded information.
14. For the above reasons, the Commissioner has concluded that items 1 and 3 do not meet the requirements of section 8 of FOIA and are not information requests.

Section 40 – personal data

15. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
16. The trust has withheld the names of third parties and their email addresses. The Commissioner agrees with the trust that data subjects can be identified from this information and therefore it is correct to categorise it as personal data.
17. It is now necessary to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).
18. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
19. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful. The most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"¹.

¹ Article 6(1) goes on to state that:-

20. When considering Article 6(1)(f), it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
21. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.
22. No specific arguments in relation to part i) and ii) of the test have been made by the trust or the complainant.
23. The Commissioner recognises the general interest in accountability and transparency, in providing access to more detailed information on the expenditure of the trust and in a timely fashion to enable the public to scrutinise the trust's handling of public funds. These are legitimate interests in pursuit of this information. However, in this case the Commissioner does not consider it is necessary to disclose the personal data of those data subjects concerned to meet those interests. The invoices themselves with the financial information contained meet those needs. The disclosure of the personal data of data subjects concerned would not add anything further.
24. As disclosure is not necessary, there is no need to go on to consider part iii) of the test. There is no lawful basis for processing, it is unlawful and therefore it does not meet the requirements of principle (a). The Commissioner therefore finds the trust is entitled to withhold the requested information under section 40(2).

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Section 43 – commercial interests

25. Section 43 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party. It is also subject to the public interest test.
26. The information withheld under this exemption is bank account details, invoice, account or order numbers and individual or tailored, negotiated pricing.
27. The trust said in its initial response to the complainant that disclosure would be likely to lead to disclosing a third party's pricing structure and therefore disadvantage their commercial interests when tendering for or competing for future contracts.
28. The Commissioner considers individually and tailored pricing information would be useful to third party competitors, they could see what the third party charged and proceed to undercut them in future tenders and projects. It would also disclose to competitors what the trust was willing to pay, thereby prejudicing the trust's ability to secure similar or best prices in the future.
29. The Commissioner has also previously agreed that disclosure of bank account details would be likely to prejudice the commercial interests of the trust. He sees account information with suppliers as similar. The Commissioner made a similar decision here:

[Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](#)
30. For these reasons, the Commissioner is satisfied that section 43 of FOIA applies.
31. In terms of the public interest test, the trust outlined in its response of 6 July 2022 why it considered the public interest rested in maintaining the exemption. These arguments will not be reiterated here.
32. The Commissioner recognises the public interest in openness and transparency and in allowing members of the public to scrutinise how public authorities are utilising public money. It is important to see if value for money is being achieved and if not bringing this to the forefront. However, this cannot be at the expense of the commercial interests of the trust or a third party. It is important to ensure that both are able to compete fairly and competitively in the market place otherwise true value for money and being in a position to secure the best possible price and terms cannot be achieved. Such consequences are not in the wider interests of the public.

33. For the above reasons the Commissioner is satisfied in this case that the public interest rests in maintaining the exemption.

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.

Signed

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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