

Our Reference North East and North Cumbria ICB\
FOI ICB 24-041

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By Email

16 May 2024

Dear Applicant

Freedom of Information Act 2000 – Request for Information – NHS North East and North Cumbria Integrated Care Board (NENC ICB)

Thank you for your request received by North of England Commissioning Support (NECS) on 22 April 2024 for information held by NHS North East and North Cumbria Integrated Care Board (NENC ICB) under the provisions of the Freedom of Information Act 2000.

NENC ICB covers the areas of County Durham, Gateshead, Newcastle, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland, and Tees Valley (which covers the 5 councils that make it up – Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland and Stockton-on-Tees).

Please find the information you requested on behalf of the ICB as follows.

Your Request

Please could I request the following information under the Freedom of Information Act.

1. Overview of Communication Services Funding and Providers:

- Could you provide a detailed overview of the current communication services (including SMS, email, and patient engagement platforms) funded by the ICS for use in GP practices within your jurisdiction?
- Please list all providers currently contracted to supply these communication services, specifying the nature of the services they provide in full.

2. Procurement and Contract Details:

- Can you detail the procurement process followed for selecting communication service providers, specifically mentioning any open tenders or frameworks used?
- For each contract awarded for communication services in the last five years, please provide:

- The name of the awarded provider,
- The value and duration of the contract,
- The specific services covered under the contract.

3. **SMS/Text Messaging Specifics:**

- Regarding contracts awarded, could you provide the rationale for the selection, particularly in terms of cost-effectiveness, service comprehensiveness, and any unique features or benefits that influenced the decision?
- Were any contracts directly awarded without a competitive tender process? If so, please provide the reasons for this approach and any documentation justifying the decision.

4. **Future Procurement and Innovation Opportunities:**

- Are there any upcoming opportunities for new providers to bid on communication services within the ICS?
- How does the ICS support innovation in patient communication and digital health solutions? Are there specific criteria or challenges you are looking to address with future procurements?

5. **Compliance and Framework Agreements:**

- Please confirm whether the contracts with current communication service providers, adhere to NHS procurement guidelines and framework agreements.
- If there have been any deviations or exemptions in following standard procurement protocols, could you provide details and justifications for these cases?

Our Response

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB does hold of the information you have requested.

1. **Overview of Communication Services Funding and Providers:**

- NENC ICB use a range of NHS Mail, SMS and personal engagement platforms (PEPs) across our ICB for various internal and external communications.
- NENC ICB does hold the information you have requested regarding providers currently contracted to supply communication services.

The ICB considers that this information is exempt under Freedom of Information Act 2000, Section 24 (safeguarding national security). Should one of the companies listed be subject to a cyber-attack it would highlight vulnerabilities within our systems which could be exploited through threat actions. We do not provide supplier names or solutions under Section 24 of the FOIA2000 regulations due to cyber security risks to the public.

Section 24 is a prejudice-based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

The factors in favour of disclosure would include:

- The inherent public interest in the openness and transparency of public authority dealings.
- The public interest in understanding what action the government is taking across the UK to protect communities.

Factors in favour of withholding the information are largely laid out in the explanation for the use of the exemption above but would include:

- Releasing this information could put national security at risk by identifying more vulnerable areas of the UK or increasing interest in other areas, which could ultimately lead to the identity of individuals, which may assist others intending to counter such work.
- Identification of those working locally to deliver the aims and objectives of the Channel and Prevent programme could enable those wishing to counter such work to disrupt delivery of ongoing work.
- Disclosure of the information would enable those intent on engaging in terrorist activities to determine on a national level which areas within the UK may be a vulnerable area to target.
- Should one of the companies listed be subject to a cyber-attack it would highlight vulnerabilities within our systems which could be exploited through threat actions.
- Such vulnerabilities of software solutions have been exploited in the past where patient held data has been used in ransomware attacks.
- Such attacks have financial implications for NHS organisations, cause reputational damage and has implications for patient confidentiality.

In conclusion, the ICB recognises that there is a public interest in the disclosure of information which facilitates the accountability and transparency of public bodies for decisions taken by them. However, there is also a significant public interest in safeguarding national security.

2. Procurement and Contract Details:

- We are not currently undertaking any active procurements. We are awaiting the publication of the national Digital Pathways Framework.
- NENC ICB holds the name of the awarded provider, however we consider this to be exempt under section 24, due to the reasons listed above.
- NENC ICB does hold details relating to the value and duration of the contract. We consider this commercially sensitive and exempt under section 43 due to the reasons noted below.

To successfully compete for goods and services, the ICB must ensure that information which could harm its commercial activities is not placed into the public domain. Release of such information could potentially compromise the ICB's ability to effectively carry out their procurement function which enables them to compete on an equal playing field when tendering services. The ICB's position may have been severely compromised if that information were to be released into the public domain which under FOI is to the world at large.

The procurement of any service is undoubtedly a commercial activity which is carried out in a competitive environment. External companies are competing to deliver the required services at a competitive and cost-effective price. Those companies who completed the ICB's invitation to tender were all competing to secure the contract with us.

The ICB work to ensure that services are procured efficiently, effectively and in accordance with the appropriate frameworks to get the best possible price bearing in mind that public money is being used. FOI responses are considered as mentioned above to be a release to the world at large and not to one applicant. By disclosing the specific details of the contract during the tender process could seriously undermine the trust and confidence which suppliers may have in our ability to effectively procure such services and may lose confidence in the ICB that their operational information may be comprised, and their information will not be secure throughout the process and not shared with third parties. This may deter businesses from competing and less likely to bid for public sector contracts if they believe the live procurement process could be prejudiced by sharing commercially sensitive information. It is important for the conduct of such tendering exercises to not disadvantage those businesses by making their information publicly available until after the contract has been awarded.

The application of this exemption requires an examination of the public interest in disclosure in comparison as opposed to that in non-disclosure.

The factors in favour of disclosure would include:

- Increasing public understanding of the tendering and procurement process and the types of suppliers who bid for services.
- Enhancing the transparency and openness of the tendering process.
- Increasing public confidence in the integrity and probity of the tendering process.
- There is significant public interest in suppliers who are unsuccessful when bidding for contracts.

Factors in favour of withholding the information are largely laid out in the explanation for the use of the exemption above but would include:

- Ensuring there is fair competition for public sector contracts.
- Protecting the ability of bidders to compete on a level playing field.
- Preventing a distortion of the procurement process that would have the potential effect of raising costs to the public sector and/or reducing the quality of services procured.

After consideration of the above factors, we believe, on balance, the public interest lies in maintaining the exemption.

- NENC ICB holds details of the specific services covered under the contract, however, we consider this to be exempt under section 24, due to the reasons listed above.

3. SMS/Text Messaging Specifics:

- Regarding contracts awarded, all procured services follow NHS and UK Government procurement rules & guidance. All potential systems are assessed against a set of specific capabilities and requirements, appropriate to the systems and the frameworks they are procured from. For example, SMS services are assessed against the following high-level

headings "Functionality, Security, Reporting, Support, Cost/Pricing" – there are several criteria under these main headings.

- Yes, there has been a requirement to allow contract extensions due to delays with release of the NHS Digital Pathways Framework.

4. Future Procurement and Innovation Opportunities:

- Future procurements will be undertaken via national frameworks to ensure fairness, and that solutions are in line with national standards.
- Any such innovation would be wrapped into a project where requirements gathering would be undertaken in conjunction with our user base.

5. Compliance and Framework Agreements:

- Agreements which the ICB hold on behalf of the ICS have been procured in conjunction with the National Procurement Hub, and therefore adhere to guidelines and framework agreements.
- Standard procurement protocols are followed.

In accordance with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS ICB website <https://northeastnorthcumbria.nhs.uk/>.

If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me on the above telephone number or at the above address.

If you are unhappy with the service you have received in relation to your request and wish to request a review of our decision, you should write to the Senior Governance Manager using the contact details at the top of this letter quoting the appropriate reference number.

If you are not content with the outcome your review, you do have the right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act 2000. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the North of England Commissioning Support Unit.

The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Any information we provide following your request under the Freedom of Information Act will not confer an automatic right for you to re-use that information, for example to publish it. If you wish to re-use the information that we provide and you do not specify this in your initial application for information then you must make a further request for its re-use as per the Re-Use of Public Sector Information Regulations 2015 www.legislation.gov.uk . This will not affect your initial information request.

Yours sincerely

S Davies

S Davies
Information Governance Officer