



**North East and
North Cumbria**

Our Reference North East and North Cumbria
ICB\FOI ICB747

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01 March 2024

By Email

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 05 February 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

I would like a copy of the most recent dental contracts and variation agreements. In particular number of access sessions, sessional rate, targets, etc put in place for:

Charlton and Silver,50 John St, Sunnyside, Sunderland SR1 1QH and
Charlton and Silver,2 Atkinson Rd, Fulwell, Sunderland SR6 9AR

Our Response

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB does hold some of the requested information. However, on this occasion, it is not possible to satisfy all elements of your request.

The Freedom of Information Act (FOIA) 2000 contains a number of exemptions that allow a public authority to withhold certain information from release. Some of the requested information is exempt under s.43(2) of the FOIA2000 as disclosure is likely to prejudice the commercial interests of a person as defined by the Act.

www.northeastnorthcumbria.nhs.uk

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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 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 may be shared with third parties.

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.

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.

In addition, there are specific details contained within that contract which are also withheld in accordance with s.41 of the FOIA, which protects against the disclosure of information which was provided to the ICB in confidence. Contract documentation include CVs are legal agreement between the commissioner and the provider and as such are commercially sensitive so would not be shared with a third party. Those details are considered to be confidential in nature and were provided to the ICB without any reasonable expectation they would subsequently be made publicly available.

Therefore, NENC ICB considers that the exemption under s.41 (Information provided in confidence) applies to the requested information. To successfully apply this exemption, we must also consider whether the information is confidential in nature. When considering if a s.41 is applicable, we must complete the three-stage test:

- Does the information have the necessary quality of confidence about it.
- Has the information been provided in circumstances to import an obligation of confidence.
- Would the disclosure be detrimental to the person who provided the information.

In accordance with s.41 of the FOIA, information is exempt if:

- (a) it was obtained by the public authority from any other person (including another public authority), and,
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

We can confirm the provider does not deliver access sessions/participate in the access session scheme.

Furthermore, we believe that some of the information contained within the contract constitute the personal data of individuals employed by the supplier. We consider this information to be exempt from disclosure under s.40(2) of the FOIA2000 as it would constitute personal data as defined by Article 4(1) of the UK General Data Protection Regulation (UK GDPR).

However, section 40(8) of FOIA confirms that for the purposes of considering disclosure, a public authority may consider the legitimate interest's lawful basis for processing. In considering the balance between identified legitimate interests and the rights and interests of the individuals concerned, we must consider if the proposed disclosure would be within the reasonable expectations of the individual when the data was collected.

We believe that disclosure of the personal information relating to those individuals would be contrary to the requirements of Article 5(1)(a) of the GDPR; namely that information must be processed lawfully, fairly and in a transparent manner. These individuals would have no expectation this information would be made publicly available, and we have not identified a lawful basis that would allow or require us to disclose this information.

We have followed the Information Commissioner's guidance in assessing whether it is fair to disclose the information under FOIA. This involves considering the nature of the information, the expectations of, and potential harm (of disclosure) to, the data subjects, and how any legitimate public interest in this information is balanced against the rights and freedoms of the data subjects.

In considering a disclosure under FOIA, we must consider that any information released under the Act will be placed in the public domain, through our own disclosure log or by other means.

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

Pamela Coxon

Pamela Coxon
Information Governance Officer