



North East and North Cumbria

Our Reference HM\North East and North
Cumbria ICB\FOI ICB687

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30 January 2024

Applicant
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 03 January 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).

Your Request

Request for Details for Targeted Lung Health Checks - North Programme tender.

1. Copy of successful tender.
2. Final pricing of successful bidder.
3. Expiry date of the awarded contract.
4. Approximate date that the tender will be reissued towards the end of the current contract period.
5. How many bidders submitted responses?
6. Name of all bidders who submitted responses.
7. Rank of all bidders who submitted responses.

Our Response

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

The s.43(2) exemption applies to question one, in its entirety.

We have applied this exemption as disclosing the successful tender would adversely affect the commercial interests of NENC ICB and the companies involved. The bid was part of a competitive process and the identification of details about the successful company would reduce the innovation of tendering parties' bids in future procurement processes, as this would be likely to inhibit competitive bids regarding details around intellectual property and products. However, we applied a section 43(2) exemption as it is our belief that release of this information would prejudice the commercial interests of the ICB and those third parties who applied for the tender framework.

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.

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 so close to the tender process and contract award 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 their commercial sensitive information could be prejudiced by disclosure through an FOI request. It is important for the conduct of such tendering exercises to not disadvantage those businesses by making their information publicly available.

The successful tender contains confidential information regarding the contract. If we were to disclose this information, it is likely it would cause disruption, be likely to negatively impact upon the day-to-day operations of the ICB plus a lack of trust with our patients, suppliers, third party and associated agencies.

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*

This information, if made publicly available, has the likelihood of prejudice to be more than hypothetical and the risk is real and significant to our reputation. Whilst we recognise there is a public interest in the operation and management of the ICB, it is considered this is outweighed in ensuring the ICB can operate effectively and efficiently to deliver a valuable and necessary public service. Therefore, we believe the balance of the public interest test falls in favour of withholding the information and does not override our reasons for withholding this information.

Q2,3,5,7

This information can be found in the Contract Award Notice; therefore, this information is exempt under Section 21 - Information Accessible by Other Means.

<https://www.contractsfinder.service.gov.uk/Notice/614258e0-53a4-41a2-803b-46ca21de0dc9>

<https://www.find-tender.service.gov.uk/Notice/000057-2024>

4. *This is to be confirmed and will be procured under the appropriate Legislation for Healthcare Services.*
6. *Two bids received, information for the successful bidder can be found in the Contract Award Notice, therefore, this information is exempt under Section 21 - Information Accessible by Other Means. Links as above.*

Additional bidder InHealth Ltd

In line 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 make a complaint or 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 complaint, you may apply directly to the Information Commissioner for a decision. 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

Hilary Murphy

Hilary Murphy
Information Governance Officer