

Our Reference North East and North Cumbria ICB\
FOI ICB 24-021

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By Email

1 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 9 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

This request is regarding the commissioning of the Anticoagulant Monitoring Clinic which has been given to Intra Health as from 1st April 2024. I would like to request the following information from the ICB using the Freedom of Information Act:

1. Details of the contract put out to tender.
2. Date of publication inviting companies to tender.
3. Details of publication/s in which the advert was placed.
4. Which and how many companies showed an interest in bidding for the contract
5. The names of the companies which submitted bids and the details of those bids e.g. cost and quality of service to be provided
6. On what date was the award of the contract published and in which publication.

Our Response

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

1. We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB holds some of the information you have requested. However, this is available on the websites below, published on 13th September 2023.

Find Tender Service: [Anticoagulation Services – Find a Tender \(find-tender.service.gov.uk\)](https://find-tender.service.gov.uk)
Contracts Finder: [Anticoagulation Service – Contracts Finder](#)

In accordance with s.21 of the FOIA, we are not required to provide information in response to a request if it is reasonably accessible to you by other means.

2. Please refer to the response to question 1 above.
3. Publication details are Find a Tender and Contracts Finder as governed by the Public Contracts Regulations 2015 (as amended), the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, the Public Services (Social Value) Act 2012
4. One bid was received for lots 1, 2, 4 and 5. No bid was received for lot 3.
5. Bids were evaluated as per the published Invitation to Tender Criteria; Quality was worth 100% of the marks and Finance was evaluated on a Pass/Fail criteria. Costs relating to each lot are detailed in the links below as is the name of the successful bidder.

In accordance with s.21 of the FOIA, we are not required to provide information in response to a request if it is reasonably accessible to you by other means. Please refer to the links below for this detail.

Find Tender Service: [Anticoagulation Services – Find a Tender \(find-tender.service.gov.uk\)](https://find-tender.service.gov.uk)
Contracts Finder: [NECS479 – Contracts Finder](#)

In relation to the details of the bids, e.g, cost and quality of service to be provided, NENC ICB can confirm we do hold the information requested however, the disclosure of this information would be likely to prejudice the commercial interests of a third party. We do not have consent from the third party/parties to disclose the information you have requested. Therefore, your request is exempt from disclosure under Section 43(2) of the FOIA 2000.

S.43(2) of the Freedom of Information Act protects against the disclosure of information where it would be likely to prejudice the commercial interests of either a third party or the public authority itself. It is our belief the release of the specific details would, or would be likely to, prejudice the commercial interests of the contractual arrangement between the ICB and the third party/parties.

The likelihood of prejudice is to the commercial interests of both a public authority and a third party, where the relationship between them is itself in the commercial interest of one or both parties and where disclosure could damage that relationship and hence those interests. This is particularly relevant where a request will be disclosing commercially sensitive information which has been supplied to the public authority by the third party. The information contained within the legal contract as such is not a contractual arrangement in which the ICB are a party to.

Section 43(2) is a prejudice based 'qualified' 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.

Considerations in favour of disclosure:

- The inherent public interest in the openness and transparency of public authority dealings
- The public interest in demonstrating that officials are spending public money wisely and getting best value, without fear or favour.
- Transparency of prices paid by the ICB for NHS services.

Considerations against disclosure:

- Damage reputation or business confidence for the provider organisation by sharing sensitive data.
- May prejudice future contracts/business by providing unfair competitive advantage if the requester is involved in current or future awarding of contracts with the ICB.
- Disclosing this information may cause more economically efficient providers to raise prices.
- Disclosing this information could prejudice the ICB's ability to obtain best quality of service and value.
- Releasing this information may cause current more economically efficient providers to raise prices. It is considered that the ICB paying more for services would not be in the public interest.
- The inherent public interest in avoiding the prejudice specified in the exemption.
- Competitive disadvantage to third party contractor.
- Disclosing this information could weaken the ICB's position as potential companies would not have confidence that the ICB would keep sensitive data private.
- Risk to future procurement of these services – sharing commercially sensitive information could distort future bids.

In conclusion, we believe there is a commercial interest risk to the single bidder on this tender. Disclosing the information may give present and future competitors in the market an unfair advantage in any future procurements (i.e., potentially providing insight into costs associated with service delivery which they wouldn't have had the opportunity to see otherwise). This gives potential commercial advantage for future tenders from providers who may wish to compete for these services.

It would competitively disadvantage the current provider whose clinical and business model will have been predicated upon these costs, and prejudice future contracts business by providing unfair competitive advantage if the requester is involved in current or future procurements with the ICB. It would undermine business trust in the ICB as commissioner/purchaser of services to disclose without the consent of the provider.

Given that the definition of 'public' under the Act is considered to be the public at large, rather than just the individual applicant or a small group of people and that 'public interest' is not necessarily the same as what interests the public, it is considered that to release this sensitive information into the public domain is likely to result in prejudice to the commercial interests of the ICB which is not outweighed by the wider public interest for disclosure.

The Information Commissioners Office has established a multi criteria test for assessing whether a section 43(2) exemption is applicable to the requested information. The first criteria is to determine if the information relates to or could impact on a commercial activity, the second

criteria is if the commercial activity is conducted in a competitive environment, and finally if that information is commercially sensitive.

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 public interest in the ICB being able to work within competitive markets where results in a financial or resource benefit is put to the wider public interest. Having undertaken the balancing exercise, the ICB has concluded the balance of the public interest test falls in favour of withholding the information and does not override our reasons for withholding this information.

6. Both contract award dates were 21 February 2024. They were published in the publications below:

Find Tender Service: [Anticoagulation Services – Find a Tender \(find-tender.service.gov.uk\)](https://find-tender.service.gov.uk)
Contracts Finder: [NECS479 – Contracts Finder](#)

In accordance with s.21 of the FOIA, we are not required to provide information in response to a request if it is reasonably accessible to you 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

S Davies

S Davies
Information Governance Officer