



North East and North Cumbria

Our Reference HM\North East and North
Cumbria ICB\FOI ICB561

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24 November 2023

Dear

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 October 2023 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 and our Response

Please provide the following information:

A copy of all contract(s) issued by the CCG/ICB to Queen Elizabeth Hospital (QE) (Gateshead Health NHS Foundation Trust) for the provision of primary care services at Crawcrook Medical Centre, Rowlands Gill Medical Centre, Blaydon GP Surgery, and Grange Road Medical Practice (herein called 'the Practices'). Contracts should cover all periods.

Further to our email dated 30th October 2023 in which we advised we were considering your request and whether an exemption may be used to withhold any information. Although the FOI Act carries a presumption in favour of disclosure, it provides exemptions which may be used to withhold information in specified circumstances. Some of those exemptions are referred to as "qualified exemptions" and are subject to a public interest test. This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information. In such circumstances, the FOI Act allows us to exceed the 20-working day response target where we need to consider the public interest fully. The information you requested was being considered under the exemptions, s.41 (information provided in confidence) and s.43 (prejudicial to commercial interests) for which we extended the 20-working day response period to complete the public interest test. We have now had an opportunity to review those proposed exemptions and have concluded the

application of the s.40(2) exemption is necessary in relation to this question, but that s.41 and s.43(2) are not appropriate.

Please find attached the related contracts. Information about staff members transferred through TUPE to their new employer have been redacted from this disclosure as it would constitute personal data, as defined by Article 4(1) of the UK General Data Protection Regulation (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 the 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.

Such requests that would include the disclosure of personal data in response to an FOIA are required to be assessed to determine whether disclosing the data would breach the data protection principles contained within Article 5(1) of the UK GDPR.

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

Disclosure of the personal information relating to these 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. Those 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 therefore believe that disclosing this information would risk revealing personal data about those employees. We have followed the Information Commissioner's guidance in assessing whether it is fair to disclose this information under FOIA. This involves considering the nature of the information, the expectations of the individuals concerned and the likely potential of harm to the data subjects by disclosing the requested information. We have also considered if there is a legitimate public interest in this information being disclosed to what is considered under FOIA as disclosable to the public at large and balanced this against the rights and freedoms of the employees concerned.

We have concluded that the disclosure of living individuals' identifiable data within the contracts would be contrary to the requirements of Article 5(1)(a) of the UK GDPR specifically that information must be processed lawfully, fairly and in a transparent manner.

It is not the intention of the ICB to make this information publicly available. Therefore, the data subjects would have no reasonable expectation this information would be made public either now or when the data was first created. Additionally, we have not identified a lawful basis which would require us to disclose this information. We have therefore concluded that disclosure of this information would be in contravention of the UK GDPR.

Where information has been redacted from the accompanying files, we have replaced the text with a black square.

Confirmation of the dates QE operated the Practices (start and finish).

Initial contract was 1 January 2021 – 31 December 2021. Subsequently extended to 30th August 2022.

General Practice funding is defined as funding received via the global sum, quality and outcome framework, enhanced services, PPA reimbursement, registrar reimbursement,

GP Maternity and GP sickness reimbursement, premises cost reimbursement, and locally commissioned services and schemes (herein described as 'core contractual income'). However, it is recognised that Practices may go through difficult times that require emergency funding, transitional funding, or other funding as part of a scheme of underwriting or financial guarantees (such as those provided during a short-term emergency contract). Please provide details of any emergency funding, subsidy, bail out, transitional funding, funding given as a result of underwriting or financial guarantees, and any other funding given to QE separate to core contractual income. This question specifically asks whether QE received income over and above core contractual income and the value of such income.

These contracts included estimated payments as of 1 January 2021 for Global Sum, Transition Payment, Direct Enhanced Services and QOF. A final reconciliation of any remaining sums owed remains ongoing and is subject to change. Therefore, we have provided those figures as of 21st November 2023 in order to fulfil our statutory duty to a respond to this request.

In relation to the above question, please break this down into amount per year (each 1st April to 31st March period including the current year for any backdated funding claimed and received where such amounts were given to QE in relation to the contract, including set up costs, running costs, and reconciliation) and broken down into following categories:

- a. Locum costs
- b. Clinical staff salaries
- c. Non-Clinical staff salaries
- d. Management costs
- e. Estates
- f. Medical equipment
- g. Drugs
- h. Any other category that is already known
- i. Where other amounts exist but no category is known, either an explanation of what it is or a combined amount

As outlined above a final reconciliation is still ongoing.

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