



North East and North Cumbria

Our Reference North East and North Cumbria
ICB\FOI ICB585

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27th November 2023

By Email

Dear Requestor,

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

I write in response to your request for an internal review dated 24th October 2023.

In accordance with our FOI appeals process, your response has been shared with me as the Governance and Assurance Manager – Information Governance to consider this matter. I note you have appealed against the redaction of information contained within the ICB's response as you claim it is "incomplete and inadequate". You believe that as a public body, the ICB is withholding information which you believe should be readily available within the public domain.

I have found some changes should be made to the response previously provided to you. NENC ICB's amended response to the questions asked in your email are detailed below.

Your Request

Unfortunately, the information provided continues to be incomplete and inadequate. I have requested full disclosure of documents leading up to NPC taking over the delivery of medical services for the practices of Felton and Widdrington but have only been provided with the output of one meeting.

The original minutes refer to “a paper” being accepted and its recommendation of NPC taking over, then subsequently changed to a subcontracting process with NPC.

I would like a copy of this “paper” and its recommendation.

It's a legal nonsense to suggest a contractor, the doctors”, can subcontract services to NPC and become employees of that same subcontractor.

That's not a subcontract, that's a takeover and the NPC website description of the legal process confirms this by confirming the doctors no longer have any personal liability and become salaried employees.

It goes on to confirm NPC also become the tenant and Northumbria FT can become the landlord.

All this confirms under this arrangement the Doctors could not legally be signatories of the proposed new surgery lease, contrary to the answer provided in your response letter.

Please provide me with a copy of the NPC subcontract agreement with Northumberland Health.

From memory the original PID quoted building costs of £1.2m and a rent of £52000/pa. It is not credible that the original PID valuations and rent assessments have remained the same after over three years and rampant inflation.

Please provide copies of any new district valuers reports obtained for the new Felton surgery or confirm why they have not been obtained.

If not obtained, please provide new figures for building costs, and rent to be paid to Assura/pa.

NPC website and extract

<https://www.northumbriaprimarycare.co.uk/services/property-management/>

By joining NPC, partners retain their GMS/PMS contract with NHSE, but sub-contract the delivery of the contract to NPC. This provides a firewall for all personal liabilities to partners as well as removing non-clinical burden.

Partners are appointed to Salaried Partner role with a guaranteed salary and practice workforce all TUPE into NPC, meaning NPC takes responsibility for all employment. NPC also then becomes the tenant and Northumbria FT can become the landlord for the premise. Finally, each practice manager continues with their role as before, but with support from NPC's HR Manager, Finance Manager, Communications Manager and the NPC Management Team.

This means that your patients continue to see your team, from your building, but with a greater level of stability and resilience from a larger, supportive organisation. Our aim is to help you improve support to your patients and remove as much of the non-clinical burden as possible. Whilst this is a decision practices must consider with the long term in mind, joining NPC is deliberately not an irreversible process.

REMOVE PERSONAL LIABILITY

By joining NPC, partners remove their personal liability, whilst taking on the role of a Salaried Partner

NO CHANGE TO CLINICAL DELIVERY

Your patients will continue to be seen by faces familiar to them, in the location they're used to.

GREATER SUPPORT

When you join NPC, your practice manager gets access to our Management Team who provide support across a range of areas.

It is disappointing that a public body spending public funds is neither open nor transparent and seeks to withhold information which should be readily available in the public domain when requested.

Our Response

1. The original minutes refer to "a paper" being accepted and its recommendation of NPC taking over, then subsequently changed to a subcontracting process with NPC. **I would like a copy of this "paper" and its recommendation.**

Please find attached copies of the following documents regarding the recommendation for NPC to take ownership:

- *Copy of the Paper "20230712 PBDG Agenda Item 10 A84029 Sub-contracting Decision paper".*
- *"20230712 PBDG Agenda Item 10b Annex A - ASSURANCE FRAMEWORK SUB-CONTRACTING OF CLINICAL SERVICES UNDER GMS CONTRACTS"*
- *"20230712 PBDG Agenda item 10c Annex B -Mandatory terms regarding subcontracting"*

Some information has been redacted from the accompanying files as they are outside the scope of this FOIA and contain details which are not relevant to your request. Where information has been redacted, the text has been replaced with a black square.

2. **Please provide me with a copy of the NPC subcontract agreement with Northumberland Health.**

In relation to a copy of the subcontract agreement, I 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 this partner 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 practice and the NPC.

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 NPC subcontracting arrangement details the legal contract between NPC (Ltd) and the business owning partners and as such is not a contractual arrangement in which the ICB are a party to.

The market for primary care provision is growing with many large profit-making ventures looking to expand within the North East region. Where a practice identifies itself as struggling or the partners of that practice indicate a desire to transfer their practice to a large provider there is often a great deal of interest. In line with the GP contract, GP practices operate as independent businesses with public funding given based on the number of patients and disease prevalence. As such, the acquisition of patients and failing practices has become competitive in nature.

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 commercial activities here are that GP contracts may be bid for by the private sector to oversee the operation and management of the practice. The number of contracts awarded to private providers has increased to treat NHS patients and deliver some clinical and non-clinical services. In those situations, it is necessary for any outgoing partners to remain on the contract of a failing practice to enable Northumberland Primary Care (NPC) to conduct its operations to deliver patient centred and sustainable care for its patients.

Significant resources have been devoted to ensuring that patient care is at the forefront of any decision making. The release of the requested information is likely to cause reputational damage from public perception that the existing practice is not operating effectively and are not adhering to operational procedures. This could cause distress for patients leading to misinterpretation that the best care and support is not being provided. This would prejudice the practice's commercial interests by causing reputational damage from a misleading impression that the GP practice are inadequate which in turn could lead to financial loss.

This also considers any disclosure of information under FOIA is to the public at large and is potentially available to other providers of the same service. The commercial interests of the practice, power and decision-making abilities may be prejudiced where a disclosure is likely to weaken its position in a competitive environment by revealing market sensitive information or information of potential usefulness to its competitors. This could damage the practice's ability to compete fairly with other health and care providers in the borough.

Where a public authority is withholding information on the basis it would likely prejudice the commercial interests of a third party, it must consult with the practice to obtain their views about the disclosure of that information. NPC has raised concerns that details of this commercially sensitive contractual arrangement could in certain circumstances damage the confidence in which the patient population has in that practice even though the power and decision-making abilities contained within the sub-contract is negligible. This information, if made publicly available, has the likelihood of prejudice to be more than hypothetical and the risk is real and significant to their reputation.

Whilst we recognise there is public interest in the operations and management of the practice by enhancing transparency and openness, increasing public confidence, increasing public understanding of contractual arrangements including getting value for money when purchasing goods and services. It is considered this is outweighed in ensuring the fair competition for public sector contracts and that any disclosure does not undermine this function, affecting its bargaining position during contractual negotiations which could result in the less effective use of public funds. As well as private organisations finding it difficult to conduct commercial transactions with a public authority and could be fearful of suffering commercially as result. Finally, the practices within the region need to compete fairly and successfully for the delivery of a valuable and necessary health and care 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.

3. Please provide copies of any new district valuers reports obtained for the new Felton surgery or confirm why they have not been obtained. If not obtained, please provide new figures for building costs, and rent to be paid to Assura/pa.

Information is withheld from disclosure under s.43(2) exemption as outlined in our response to question two above.

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

Clair Flynn

Clair Flynn
Governance and Assurance Manager – Information Governance