



North East and North Cumbria

Our Reference HM\ North East and North
Cumbria ICB\ FOI ICB218

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Your Reference

10 February 2023

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

Thank you for your request received by North of England Commissioning Support (NECS) on 30 January 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.

For information Clinical Commissioning Groups ceased to exist on 30 June 2022. Services that were previously delivered by the CCG are now being delivered by the successor organisation NHS North East and North Cumbria (ICB). This covers the areas of County Durham, Newcastle Gateshead, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland and Tees Valley.

Details of Request

NECS417, Alternative to Crisis Service (Newcastle) for and on behalf of NHS North East and North Cumbria Integrated Care Board (ICB) - Standstill Period Concluded – feedback and Freedom of Information Request.

We would like to build on this by making a Freedom of Information Request to see the content of the successful tender by Mental Health Concern.

Response

NHS North East & North Cumbria Integrated Care Board (ICB) does hold this information. The ICB considers this information exempt from disclosure under Freedom of Information Act 2000, Section 43(2) (Commercial Interests). Releasing this information would adversely affect the commercial interests of the ICB.

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.

Public Interest Test

Considerations in favour of disclosure:

- There is a public interest in publishing information relating to how public money is spent and accounted for, which would be in the spirit of openness and transparency in which NENC ICB operates.
- The public interest that officials are spending public money wisely and getting best value, without fear or favour

Considerations against disclosure:

- Disclosure of this information into the public domain is likely to give the recipient of the information an unfair advantage in that they would have knowledge of commercially sensitive information pertaining to the content of the successful tender by Mental Health Concern, thus impacting on fairness and transparency.
- Disclosure of the requested information would be likely to prejudice the commercial interests of Mental Health Concern as the release of the requested information would give potential providers of a similar service a competitive advantage to any future procurement.
- Disclosing this information could weaken the ICB's position as potential companies would not have confidence that the ICB would keep sensitive information private.
- Disclosure of the information would disadvantage NENC ICB's commercial interests and not disclosing the information would ensure the ICB continues to obtain the most appropriate value for money when delivering its services for the public.

Conclusion

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 that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information having regard to the effect that disclosure would not be in the public interest.

We consider 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 information into the public domain is likely to result in prejudice to the commercial interests of the ICB and tendering parties which is not outweighed by the wider public interest for disclosure.

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.gov.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