

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 September 2014

**Public Authority:** Wye Valley NHS Trust  
**Address:** Trust Headquarters  
The County Hospital  
Union Walk  
Hereford  
HR1 2ER

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a contract for car parking. Wye Valley NHS Trust (the Trust) provided the complainant with the information it holds relevant to the scope of the request. It said that it did not however hold some of the information requested under section 1(1)(a) of the Freedom of Information Act (FOIA).
2. The Commissioner considers that the Trust was correct to confirm that it did not hold some of the requested information under section 1(1)(a) of the Freedom of Information Act 2000 (FOIA).
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 4 October 2013 the complainant requested information of the following description:
  - "1. The main contact details of Sodexo with whom the Trust have the contract.
  2. Whether the contract for car parking (with Sodexo/CP+) has a "break clause" during the 30 years.

3. Can I have a copy of the contract with Sodexo.
4. What public consultation will take place regarding the contract renewal in 2016?
5. Can I have a copy of the Equality Impact Assessment carried out in 2006.
6. Can I assume no EQIA was carried out on the initial letting of the contract/PFI agreement in 1999?
7. When the PFI contract was let/agreed with Sodexo in 1999, which they subsequently went on to the CP+ arrangement, what was the correct value at that time?
5. On 13 December 2013 the Trust responded. It provided the complainant with some information in response to the request but said that it did not hold the contract or the requested EQIA carried out in 2006.
6. The complainant requested an internal review. The Trust sent the outcome of its internal review on 11 April 2014. It provided the complainant with some further information but upheld its original position that it did not hold the contract or the EQIA carried out in 2006.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 February 2014 to complain about the way her request for information had been handled.
8. The Commissioner has considered whether or not the Trust holds any further information other than that which has already been provided.

### **Reasons for decision**

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9. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
10. In relation to the requested 2006 Equality Impact Assessment, it explained that Equality Impact Assessments were not introduced until

2010. It confirmed that such an assessment was not carried out in 2006 and therefore this information is not held.

11. The Commissioner accepts that on the balance of probabilities the requested Equality Impact Assessment is not held as the Trust has confirmed that no such assessment was carried out in 2006.
12. In relation to the contract, the Trust explained that [named company 1] runs the car parking and they are part of the Private Finance Initiative (PFI) agreement. It said that [named company 1] contract with [named company 2] who manage the day to day car parking operations. It said that the Trust is not involved in this arrangement and therefore does not have access to the contract.
13. The Commissioner therefore asked the Trust to review the clauses of the contract it holds with its PFI partners to determine whether there were any clauses which would entitle the Trust to obtain information about the contract between the PFI partners (including named company 1) and [named company 2].
14. The Trust explained that this review revealed the following Clause 79.2 of the original Project Agreement which appears to cover the disclosure of confidential information:

"Disclosure: If the Company or any Service Provider or the Trust (the "Disclosing Party") is required to disclose any Confidential Information by Law or guidance or by any governmental or regulatory authority in accordance with whose instructions the Disclosing Party is accustomed to act, then the Trust or, as the case may be, the Company, shall be deemed to have given its consent to such disclosure. The Company (in the case of itself or any of the Service Providers) shall inform the Trust and the Trust shall inform the Company, in either case in writing, of the requirement for disclosure as soon as reasonably possible after it becomes aware of it and, if possible, before any Confidential Information is disclosed. Each party agrees to assist and cooperate and, in the case of the Company, shall procure that each of the Service Providers and Sub-Contractors shall assist and cooperate in any appropriate action which the other party may decide to take in accordance with this clause."

15. It went on that Schedule 10 to the Project Agreement sets out the terms on which the car park was to be managed during construction and thereafter during the Project Term. It said that this covered car parking charges and the scope for increases. It confirmed that this information was provided to the complainant.

16. The Trust explained that there was a Charge Notice (CCN 846) subsequently agreed in 2006 that changed the scaling of car parking charges and Schedule 10 to the Project Agreement. It said that it was at this point that the PFI partners entered into an agreement with [named company 2] to manage the car park. It confirmed that the Trust does not hold a copy of this contract. It explained that this agreement is a 'Company Reserved Scheme' under the contract, so whilst its PFI partners would automatically be obliged to share information on other 'Revenue Enhancing Schemes' with the Trust, 'Company Reserved Schemes' are specifically carved out of the 'Revenue Enhancing Scheme' definition and so are protected.
17. The Commissioner considers that the Trust has provided the complainant with the information it holds surrounding the contract, prior to the change of arrangements in 2006. It has explained that the Trust does not have access to the contract between its PFI Partners and [named company 2] due to the way in which this has been set up. On the balance of probabilities the Commissioner is satisfied that the Trust does not therefore hold this information.

## Right of appeal

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18. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**