

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

### **Decision notice**

**Date:** 7 March 2013

**Public Authority:** NHS Blackpool  
**Address:** Blackpool Stadium  
Seasiders Way  
Blackpool  
Lancashire  
FY1 6JX

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

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1. The complainant has requested a copy of the successful bid in a procurement process relating to Greater Manchester Patient Transport Service. NHS Blackpool refused to disclose the requested information under section 43(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that NHS Blackpool has correctly applied section 43(2) FOIA in this case to withhold the requested information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 18 October 2012, the complainant wrote to NHS Blackpool and requested information in the following terms:  
  
"Under the freedom of information act 2000 I would like to request that you provide me with the Complete Tender Bid Submitted By Arriva for the Manchester Patient Transport Service".
5. NHS Blackpool responded on 15 November 2012. It stated that the requested information was exempt under section 43(2) FOIA.
6. Following an internal review NHS Blackpool wrote to the complainant on 20 December 2012. It upheld its application of section 43(2) FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner on 28 December 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether section 43(2) FOIA was correctly applied in this case.

## Reasons for decision

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9. Section 43(2) FOIA provides an exemption from disclosure of information which would or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
10. NHS Blackpool has explained that the complainant requested a copy of the successful bid in a procurement process relating to Greater Manchester Patient Transport Service. NHS Blackpool has explained that it considers that the successful bidder's commercial interests would be likely to be prejudiced if this information were disclosed as well as its own commercial interests.
11. In order to determine whether the exemption is engaged the Commissioner has first considered whether the prejudice claimed relates to the successful bidder's and or NHS Blackpool's commercial interests.
12. The term 'commercial interests' is not defined in FOIA. However the Commissioner has considered his awareness guidance on the application of section 43. This comments that,  
  
    "...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.
13. The Commissioner considers that the successful bid relates to the sale and purchase of services between NHS Blackpool and the successful bidder, which does therefore relate to their commercial interests.
14. The Commissioner therefore considers that the withheld information falls within the scope of the exemption.
15. The Commissioner has gone on to first consider how any prejudice to the commercial interests of the successful bidder would be likely to be caused by the disclosure of the requested information.

16. NHS Blackpool explained that at the time the request was made the procurement period had ended but the formal contract award had not been signed. A potential procurement challenge had been intimated on behalf of one of the unsuccessful bidders and so there remained a real risk of a challenge that could have led to the procurement process having to be re-started. The contract with Arriva was ultimately signed on 16<sup>th</sup> November 2012, completing the procurement process.
17. At the time of the internal review, NHS Blackpool explained that whilst the procurement process had completed, it had been contacted by NHS South East Coast who was preparing to run a similar procurement of patient transport services. There have been a number of meetings and discussions between NHS Blackpool and NHS South East Coast and, in particular, these discussions related to how NHS Blackpool conducted the procurement exercise. NHS South East Coast has yet to launch its procurement for patient transport services and so the format of that procurement is not known. However, in light of the contact NHS Blackpool has had with NHS South East Coast, NHS Blackpool considers that there is a real possibility that the NHS South East Coast procurement will follow a similar format to the NHS Blackpool procurement. While there are significant geographical differences between the areas covered by the two organisations, the expectations as to what should be commissioned may well be very similar. Furthermore NHS Blackpool explained that it is highly likely that the successful bidder of its procurement exercise is likely to also submit a bid in relation to the forthcoming South East Coast procurement exercise.
18. NHS Blackpool contacted the successful bidder at the time it conducted the internal review and therefore after the procurement exercise was complete. It asked whether the successful bidder considered disclosure would be likely to prejudice its commercial interests. The successful bidder indicated that release of the details contained within their bid would have a detrimental effect on the company. In particular, it was concerned that if details of the bid were disclosed a competitor could extract the details and use it to submit a substantially similar bid in future competitions which it may be involved in.
19. The Commissioner must determine whether the prejudice claimed is "real, actual or of substance". In this case, as the contract relating to the successful bid had not been signed, the process had not been completed. Particularly as an unsuccessful bidder had mounted a challenge relating to the process, there was potential for the procurement exercise to be reopened. The Commissioner considers that due to the timing of the request, the prejudice claimed was 'real, actual or of substance'. The Commissioner recognises that the contract

has now been signed, however there is a forthcoming procurement planned which is extremely similar to the procurement relevant to this case and which the successful bidder is likely to be involved in. The Commissioner considers that this further supports that the prejudice claimed is 'real, actual or of substance'.

20. The Commissioner therefore considers that section 43(2) was correctly engaged in this case.
21. As section 43(2) is a qualified exemption, the Commissioner has gone on to consider the public interest arguments in this case.

### **Public interest arguments in favour of disclosing the requested information**

22. NHS Blackpool has explained that it recognises that the following public interest arguments favour disclosure of the requested information:
  - It recognised that once a procurement has been completed there is a strong public interest in disclosing most of the information contained within a successful tender submission in the interests of transparency and accountability, allowing the public to see what services and standards have been promised and demonstrating that value for money has been achieved.

### **Public interest arguments in favour of maintaining the exemption**

23. NHS Blackpool has explained that it believes the following public interest arguments favour maintaining the exemption:
  - It said that at the time the request was made, there was a strong public interest in preserving the integrity of the procurement process and ensuring free and fair competition within that process, to ensure the best value for money was obtained.
  - It also said that there was a strong public interest in the forthcoming South East Coast procurement being executed fairly and the successful bidder not being put at a commercial disadvantage as it is likely they will be involved in this process also.

### **Balance of the public interest arguments**

24. The Commissioner considers that there is a public interest in openness and transparency, and in accountability for the efficient use of public funds. The Commissioner also considers that there is a public interest in disclosure of information which will inform the public about how decisions are made.

25. The Commissioner does however consider that there is a strong public interest in not disclosing information which would be likely to commercially disadvantage private companies or other public sector organisations which enter successful bids and enter into contracts with public authorities such as in this case.
26. On balance, the Commissioner considers in this case that the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption.

## Right of appeal

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27. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**