

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2022

Public Authority: Bristol, North Somerset and South Gloucestershire Integrated Care Board

Address: 360 Bristol – Three Six Zero
Marlborough Street
Bristol
BS1 3NX

Decision (including any steps ordered)

1. The complainant has requested the amount Charlotte Keel Medical Practice was paid per-patient in 2020 for carrying out their contracted services. The Integrated Care Board (ICB) refused the request under section 43(2) of the FOAI.
2. The Commissioner's decision is that the ICB has correctly applied the exemption and the public interest lies in withholding the information.

Request and response

3. On 8 November 2021 the complainant made a request for information to the Bristol, North Somerset and South Gloucestershire Clinical Commissioning Group (CCG). The CCG has since been superseded by the ICB. For the purposes of this notice the Commissioner has referred to the ICB.
4. The request for information was in the following terms:
"Please can you tell me how much Charlotte Keel Medical Practice were paid per patient in 2020 to carry out their contracted services."

5. The ICO responded on 26 November 2021 and refused the request on the basis of section 43(2) of the FOIA; a position the ICB upheld at internal review.

Reasons for decision

1. In its refusal notice, the public authority stated the following:

“The price paid per patient is considered commercially sensitive information and financial information is outlined as confidential in the contract between the CCG and the contract holder for Charlotte Keel Medical Practice. Disclosure of the information could potentially be detrimental to primary care budgets or future procurement of services if disclosed. It is in the public interest for the CCG to be able to commission services at good value to ensure the availability of primary care funds to support other primary care service areas. Whilst the Commissioner considers that the public authority’s arguments could be considerably more detailed, they do relate to a matter which he has had to deal with on many occasions: namely, the competitive market in higher education.”

2. At the internal review stage the ICB added some further arguments:

“The contract BNSSG CCG hold for Charlotte Keel is an Alternative Provider of Medical Services (APMS) contract. The standard contract for APMS is publicly available through NHS England, as are the standard contracts for General Medical Services (GMS) and Personal Medical Services (PMS). Finance schedules that accompany contracts are not made available to the public as they are commercially sensitive. They therefore remain confidential and there are clauses to that effect within the contracts.

Due to the expiry date of the current contract, (publicly available here: <https://bnssgccg.nhs.uk/library/primary-care-commissioning-committee-paper-30-november-2021-item-10/>) BNSSG CCG is currently reviewing the contractual and procurement options for Charlotte Keel. In light of a potential procurement, releasing financial information could provide an advantage to an interested party and lead to a biased procurement/contract award. This could be detrimental to the procurement process, resulting in challenge to award with significant impact on the timescales to issue a new contract and therefore risk to continuity of service provision for the population.”

3. The Commissioner accepts that the information in this case relates to the ICB’s commercial interests as it confirms a specific cost at a time

when the ICB has clearly evidenced it is going through a procurement exercise. The ICB added in its submissions to the Commissioner that:

“BNSSG ICB makes payments to GP practices made through Primary Medical Care contracts and other agreements. GP practices are independent, privately run business which are funded through public funding. BNSSG ICB contracts with GP practices to provide Primary Medical Care services to patients registered with each practice. The funding for these contracts is allocated to the ICB by central government. The ICB is required to manage its funds to ensure that they are used efficiently, effectively and provide value for money. BNSSG ICB is undertaking a procurement to secure a permanent provider of Primary Medical Care services from the Charlotte Keel Medical Practice.”

4. The Commissioner accepts that revealing exactly what per-patient fee the Medical Practice received would put the ICB at a commercial disadvantage. The procurement exercise in this case is already underway and expected to be concluded in early 2023. If the original per-patient fee is publicly known there is a genuine risk that this could be of use to interested parties. It may impact on the procurement process and, more specifically, the ICB’s ability to negotiate a best value for money contract to provide Primary Medical Care services to the Medical Practice. The ICB provided the Commissioner with additional arguments on this point; these have not been reproduced here as they reveal details about the contract currently in place but the Commissioner is satisfied these arguments are relevant and specific to the circumstances of this case. They describe how disclosing the per-patient fee in this case could be disadvantageous to the ICB negotiating a new contract at a favourable rate.
5. The Commissioner is therefore satisfied that the lower bar of “would be likely to prejudice” is engaged.

Public interest test

6. The Commissioner’s guidance on the public interest test notes that, where a prejudice-based exemption (such as section 43) is engaged, there will always be an inherent public interest in preventing that prejudice from occurring.¹

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>

7. In this case, the Commissioner has already accepted that there is a reasonable chance of prejudice occurring – therefore it follows that there will be a public interest in preventing that prejudice.
8. The complainant noted that the contracts for other practices are freely available to the public and not disclosing the information in this case would be prejudicial to the interests of the other GP practices in the area.
9. The ICB recognised the public interest in transparency and accountability to promote public understanding and to safeguard democratic processes. The ICB is also aware of the requirement in the Public Contracts Regulations 2015 to conduct procurement activity openly and in a manner that enables scrutiny where possible.
10. However the ICB argues that the overriding procurement policy requirement placed on public bodies is that all public procurement is based on value for money. This is defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. The Public Contract Regulations 2015 state that “Contracting authorities shall base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority” and “That tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach...”
11. The ICB considered that release of the information would be likely to prejudice the procurement of the contract which would not be in the public interest. If the price per patient became public knowledge then this may increase the price of the contract. It is in the public’s interest for services to be procured for the best possible cost in order for public funding to be spent in the most efficient way, in line with the overall policy requirement. The ICB also considered that in this case, release of the information to a potential bidder would prejudice the procurement and be detrimental to the overall procurement process, leading to delays either through additional financial negotiations or legal challenge to the award. Both situations would lead to significant delays in issuing the new contract and therefore a risk of service continuity for the population. It is in the public’s interest that the ICB is able to commission good quality and safe primary care medical services for the local population.
12. Should the ICB be unable to procure the services in a fair manner then the ICB would not be able to secure a provider and in this case the practice list would be dispersed. This would affect patients of the practice who would need to be reregistered to another nearby practices and also affect the current patients of nearby practices. The local Primary Care Network’s have indicated that GP Practices in the local

area are already challenged with workforce and estates restrictions and adding more patients to already struggling practices may require the ICB to significantly invest in these other practices to cope with the additional patients.

13. The Commissioner notes these are real and genuine risks identified by the ICB which they have evidenced in papers they provided to the Primary Care Commissioning Committee that the Commissioner has had sight of in reaching his decision in this case.
14. Therefore the ICB considered that the rapid procurement of a stable contract for Charlotte Keel Medical Practice to be of benefit to both registered patients and the patients of the local practices. Any delays to procuring the contract would not be in the public's interest.
15. The ICB considered the public interest in the amount of public funding provided to Charlotte Keel Medical Practice against the potential increase in costs should the cost per patient be released publicly. It is in the public's best interest that the procurement is undertaken to ensure that the best value for money is acquired. Otherwise more public money would be used for a contract which could be better used elsewhere
16. The Commissioner considers the ICB has demonstrated it has considered this issue thoroughly and with regard to the specific circumstances in this case. It is clear that this is not a simple procurement exercise and there are complexities to the contract and the situation. Whilst the Commissioner notes that the procurement has been ongoing for some time it is apparent that the exercise is intended to conclude soon and the ICB has indicated a willingness to reconsider requests such as this once the procurement has ended.
17. The Commissioner is of the view that the ICB has provided compelling arguments for withholding the information in the circumstances and the arguments for disclosure are not sufficient to override them in this instance.
18. The Commissioner is therefore satisfied that the public authority is entitled to rely on section 43 of FOIA to withhold this information.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Jill Hulley
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Information Commissioner's Office
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