

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2022

Public Authority: Dorset County Hospital NHS Foundation Trust
Address: Williams Avenue
Dorchester
Dorset
DT1 2JY

Decision (including any steps ordered)

1. The complainant has requested information about communication systems. The above public authority ("the public authority") provided some information, denied holding most of the information and relied on section 43 of FOIA (commercial interests) to withhold the remainder.
2. The Commissioner's decision is that the public authority has failed to demonstrate that section 43 of FOIA is engaged and consequently is not entitled to rely on that exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose, to the complainant, the information held within the scope of element [2] of the original request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 June 2021, the complainant wrote to the public authority and requested information in the following terms:

"Under the FOI Act, please provide the following information, with 'pagers' used as a synonym for 'bleeps':

- "[1] As at 31 May 2021, how many pagers were in use in your Trust?
- "[2] For the financial year ending 31 March 2021, what is the total annualised cost of pagers (broken down by equipment rental, licences, low value equipment replacement, maintenance of infrastructure, depreciation on capital assets and any other costs)?
- "[3] What stage of procurement and implementation is your Trust currently at and what are the achieved and proposed times for the various steps (e.g. business case approved, tender issued, contract awarded, implementation started, test system is live/user acceptance testing, deployed system is live)?
- "[4] If a contract has been awarded, which pager replacement system has your Trust selected?
- "[5] What additional features does your proposed (or implemented) pager replacement system have, compared with previous capability? (e.g. integration with electronic patient record)
- "[6] How many *users* and how many *devices* will the pager replacement system have?
- "[7] What is the estimated total annualised cost of the replacement system (broken down by equipment rental, licences, low value equipment replacement, maintenance of infrastructure, depreciation on capital assets and any other costs)?
- "[8] Will the trust retain some pagers for *emergency* communications or will emergency communications be handled by the pager replacement system? If some pagers are being retained, how many?
- "[9] If the pager replacement system fails, what will be used as a backup system? (e.g. do you have plans to use staff personal devices?)

"[10] Is the Trust on course to phase out pagers for *non-emergency* communications by 31 December 2021? If not, by when?"

"[11] Is there a benefits realisation plan or post-implementation monitoring plan in place?"

6. The public authority responded on 23 June 2021. It provided information within the scope of element [1] and stated that it did not hold any information within the scope of elements [3] to [11]. In respect of element [2] it relied on section 43 of FOIA to withhold the information.
7. In May 2022, the complainant sought an internal review and said that he would accept a single, global figure in response to element [2]. The public authority upheld its previous response.

Reasons for decision

8. The Commissioner considers that the public authority has had a reasonable opportunity to set out why the exemption applies. The following analysis sets out why he considers that this information does not engage section 43.
9. As the complainant pointed out in his original request, the Secretary of State for Health announced in 2019 that the use of NHS pagers was to be banned in the NHS from 31 December 2021.¹
10. The public authority has asserted that the information is commercially sensitive, but it has not set out, in either its refusal notice or internal review, the causal link between disclosure and the claimed prejudice.
11. Given the Secretary of State's announced ban, there is no obvious reason why the public authority would need to re-tender its current contract(s) for these devices. Its ability to negotiate deals on other forms of communication devices are unlikely to be harmed by disclosure of this information, as it would relate to a different system with different operating requirements and associated costs.

¹ <https://www.gov.uk/government/news/health-and-social-care-secretary-bans-pagers-from-the-nhs>

12. Finally, the Commissioner also notes that the public authority did not indicate whether the current supplier objected to disclosure – or was even consulted about the request.
13. For these reasons, the Commissioner is not convinced that there is reasonable likelihood of prejudice occurring and therefore the exemption is not engaged.

Other matters

14. The FOIA Code of Practice states that a public authority is not required to carry out an internal review if the requestor fails to seek one within 40 working days of the refusal notice being issued – although a public authority can exercise its discretion and accept a later application if it so wishes.²
15. When issuing refusal notices and carrying out internal reviews, the Commissioner would encourage all public authorities to use his Key Questions for Public Authorities (FOIA)³ or Key Questions for Public Authorities (EIR)⁴ to structure their arguments. Firstly, because is this more likely to dissuade requesters from pursuing their request further. Secondly, in the event of a complaint, the Commissioner is very unlikely to require a public authority to re-submit responses to questions it has already answered comprehensively at an earlier stage.

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/key-questions-for-public-authorities-foi-act-2000/>

⁴ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/key-questions-for-public-authorities-eir-2004/>

Right of appeal

16. 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

17. 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.
18. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF