

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2024

Public Authority: The Christie NHS Foundation Trust
Address: 550 Wilmslow Road
Manchester
M20 4BX

Decision (including any steps ordered)

1. The complainant has requested letters sent by The Christie NHS Foundation Trust (the Trust) to the Care Quality Commission (CQC) following an inspection. The Trust confirmed it held some information in scope of the request but withheld this under section 31(1)(g) and 31(2)(c) of FOIA.
2. The Commissioner's decision is that the Trust has demonstrated that section 31 is engaged and the public interest favours maintaining the exemption. The Commissioner does not require further steps.

Request and response

3. On 3 May 2023, the complainant wrote to the Trust and requested information in the following terms:
 - 1) "The number of letters sent to the CQC by the Trust since its well led inspection¹ in October 2022.

¹ [The Christie NHS Foundation Trust - Overview - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk/about-us/the-trusts/the-christie-nhs-foundation-trust)

- 2) The number of letters sent to the CQC on behalf of the Trust by Hempsons solicitors since the well led inspection in October 2022.
- 3) Copies of all those letters.”
4. The Trust responded on 26 May 2023. In relation to parts 1 and 3 of the request the Trust stated information was held but was exempt from disclosure under sections 31(1)(g) and 31(2)(c) of FOIA. The Trust stated no information was held in relation to part 2 of the request.
5. The complainant requested an internal review of the decision in relation to parts 1 and 3 of the request on 18 September 2023. Following an internal review the Trust wrote to the complainant on 17 October 2023 upholding its position.

Scope of the case

6. The complainant contacted the Commissioner on 2 November 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to be to determine if the Trust has correctly withheld information in relation to parts 1 and 3 of the request under section 31(1)(g) and 31(2)(c) of FOIA.

Reasons for decision

8. The Trust has argued that disclosure of the information it holds in scope of the request would be likely to prejudice the exercise of the Care Quality Commission's (CQCs) regulatory functions. The particular function it has specified is the function of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise.
9. As the regulator, the CQC's role is to obtain and assess evidence as to the compliance with the Health and Social Care Act 2008 and associated regulations, to assess and report on the quality and safety of care provided by registered providers, and to take actions where providers do not meet their legal obligations.
10. In this case the information that is being withheld is a series of letters following an inspection by the CQC. The letters were sent in the period prior to publication of the final report being published and provide

comment and challenge by the Trust on the draft version of the report shared by the CQC.

11. The Trust stated it considers disclosure would hinder the CQC's regulatory functions as the regulatory process following an inspection involves checking, challenging and reviewing findings prior to publication. This includes the free and frank exchange of views and evidence between the CQC and the Trust with the aim of reaching accurate and reliable findings. Disclosure would be likely to prejudice such regulatory processes generally, by inhibiting the free and frank exchange of views and evidence between the regulator and NHS Trust's in the future.
12. The Commissioner has considered the arguments presented by the Trust and notes the Trust, as is expected, engaged with the CQC on this matter given they are the public authority to which the likely prejudice relates.
13. The CQC pointed the Trust to a number of relevant considerations in relation to section 31. It stated that consideration should be given to the impact of disclosing the information so soon after publication of the final report. The report was published on 12 May 2023 and the request made on 3 May 2023 (prior to publication), with the internal review concluding in October 2023. after an internal review was requested in September. The CQC stated it takes care to ensure final reports are clear, balanced and properly evidenced so consideration should be given to the effect of premature disclosure on this process.
14. The CQC also suggested there may be an impact on the regulatory process by releasing information about the Trust and the inspection which falls outside of the final, balanced and evidenced findings. It is unlikely to be fair to the Trust to reveal information about draft or initial findings that were successfully challenged.
15. There is also a risk that disclosure could inhibit the Trust and other providers from engaging in the free and frank exchange of views and evidence in the future. Future reports without a fair and confidential process of challenges and reviews may be less reliable and robust.
16. The Trust considered the points made by the CQC and concluded disclosing the information would infringe on the safe space for discussions before publication and would be likely to inhibit the CQC's regulatory functions.
17. The Commissioner agrees that disclosure would be likely to have an impact on the candid nature of communications in the interim phase of the regulatory process ie between the draft report and the final reports

publication. The Commissioner recognises the CQC has powers to require registered providers to disclose information it needs to carry out its regulatory functions but at this stage of the process the onus is on the registered provider, in this case the Trust, to present any evidence or arguments to challenge anything in the draft report. As such there is a need to preserve a safe space to allow the Trust to put forward clear, candid and frank views and to challenge the CQC's assertions to ensure the final report is balanced and accurate.

18. For the above reasons the Commissioner is satisfied that regulation 31(1)(g) by virtue of 31(2)(c) is engaged.

Public interest arguments for disclosure

19. The Trust recognises there is a public interest in transparency regarding the activities of public authorities such as the Trust and the CQC and there is a specific public interest in transparency regarding the leadership, management and governance of the Trust and the CQC's inspection and findings around this.
20. The complainant points out that disclosing the information will not change the outcome of the final published report but the information would shed light on the inspection regime and the extent to which trusts are able to influence or negotiate with the CQC.
21. The complainant argues it is in the public interest to understand how the CQC's processes work as well as the approach taken by the Trust in respect of regulatory action.

Public interest arguments for withholding the information

22. The Trust argues the public interest is best served by ensuring that the CQC's regulatory functions, particularly its main objective of protecting and promoting the health, safety and welfare of people who use health services, are not prejudiced by disclosure of information that may inhibit the inspection process.
23. The Trust points out that the CQC's published report did set out detailed findings including into leadership and the area 'well-led' which was specifically referenced in the request. The Trust considers the published information sufficiently meets the public interest in transparency and disclosure of the requested information is not likely to further public understanding of these issues.

Balance of the public interest

24. The Commissioner recognises the public interest in transparency and in members of the public understanding more closely how the CQC carries

out its regulatory functions. He accepts there are clear public interest arguments in understanding how the report was finalised and the process by which registered providers can provide views and evidence to challenge initial findings prior to reports being finalised.

25. The Commissioner, in accepting the exemption is engaged, must afford weight to the fact that disclosing the information will have some impact on the CQC's regulatory functions and this would not be in the public interest. He must balance the public interest in transparency about the regulatory process against the public interest in maintaining a safe space to challenge findings and views and provide a robust final report.
26. The timing of the request in this case does carry weight. The request was made before the final report was published. Whilst the internal review was not concluded until after publication the issue was still very much fresh and, at the time of the request, live. The Commissioner does not consider it in the public interest to prejudice ongoing regulatory considerations as the CQC relies heavily on registered providers cooperating openly and candidly to preserve the process and ensure reports are fully balanced and evidenced. If disclosure took place it would be likely to hinder these processes and therefore the CQC's ability to carry out its regulatory functions effectively and this is not in the wider interests of the public. Even after publication these concerns remain as the process could still be prejudiced and disclosure may still have an inhibitory effect on the candour of discussions and any impact on the CQC's ability to carry out its regulatory functions effectively would not be in the public interest.
27. The Commissioner therefore finds, on balance, the public interest favours maintaining the exemption under section 31(1)(g) and 31(2)(c) and the information has been correctly withheld.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
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Water Lane
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