

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 April 2024

**Public Authority:** Care Quality Commission  
**Address:** Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of a service level agreement and information about amendments to reports that the Care Quality Commission produced on behalf of the Isle of Man Department of Health and Social Care. The Care Quality Commission ('the CQC') relied on section 31 of FOIA (law enforcement) to withhold the draft reports.
2. The Commissioner's decision is that the CQC is entitled to rely on section 31(1)(g) to withhold the draft reports.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 26 May 2023, the complainant wrote to the CQC and requested information in the following terms:

"I would be grateful if you could confirm if any final CQC report was amended by the Isle of Man Department of Health and Social Care and/or the Manx Care Board prior to publication. If amendments were made, we would request that the final reports prepared by CQC and sent to the Isle of Man Department of Health and Social Care and the Manx Care Board are made available to us. We would also ask that a copy of the Service Level Agreement between the Isle of Man

Department of Health and Social Care and CQC is shared with us, please.”

5. The CQC responded on 26 June 2023, advised that it did not hold the requested information about amendments made to reports or the draft reports themselves, and provided a redacted copy of the requested service level agreement. It stated that it was withholding the redacted information under sections 31 (law enforcement), section 40(2) (personal information) and section 43 (commercial interests) of FOIA.
6. Following an internal review the CQC wrote to the complainant on 1 November 2023. It stated that it did hold the draft reports and explained that some amendments had been made to wording and grammar but not to content, evidence or evaluative judgement. It advised that it was relying on section 31(1)(g) of FOIA to withhold the draft report copies.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 18 December 2023 to complain about the way their request for information had been handled. The complainant expressed dissatisfaction with the CQC’s application of section 31(1)(g) to withhold the draft reports and did not appear to hold issue with the redactions made to the service level agreement.
8. The Commissioner therefore considers that the scope of his investigation is to determine whether the CQC is entitled to rely on section 31(1)(g) of FOIA to withhold the draft reports.

### **Reasons for decision**

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#### **Section 31 - Law enforcement**

9. 14. Section 31 of FOIA states:

“(1) information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(2) The purposes referred to in subsection (1)(g) to (i) are

- c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
- j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”
10. The CQC is the independent regulator of health and social care in England. It gets its regulatory powers from the Health and Social Care Act 2008, the Mental Health Act 1983 and the Health and Safety at Work Act 1974.
  11. The Commissioner understands that the CQC has powers, under the Health and Social Care Act 2008, to enter and inspect premises where regulated activities are being carried out.
  12. The CQC has explained that it “is authorised to provide advice and assistance to another public authority for the purpose of the exercise by that authority of that authority’s functions. This power is provided [under paragraph 9, Schedule 4 of the Health and Social Care Act 2008](#).” The CQC clarified that it has no statutory functions within the Isle of Man, and therefore no statutory power to publish inspection reports or to require the publication of reports into Isle of Man health services.
  13. The CQC has explained that the work it undertook was entirely to provide advice and assistance to the Isle of Man Department of Health and Social Care (‘IOMDHSC’), and that the service level agreement creates no obligation on the IOMDHSC to publish any report produced by CQC. The CQC therefore considered that section 31(2)(c) applied as it carried out the inspection work for the purpose of supporting the IOMDHSC in ascertaining whether there were circumstances which would justify regulatory action under IOMDHSC’s powers on the Isle of Man.
  14. The CQC also considered section 31(2)(j) to apply in that the general purpose of the work was to assist IOMDHSC in work to improve the quality and safety of healthcare services on the Isle of Man.
  15. In order for section 31 to be engaged appropriately, the public authority must be able to demonstrate that disclosure of the requested information would, or would be likely, to prejudice its ability to carry out its regulatory activities.
  16. The CQC considers that disclosure would have a prejudicial effect on the CQC’s ability to carry out its advice and assistance to other public authorities function in future.

17. The CQC explained that its inspection and reporting work carried out on behalf of the IOMDHSC mirrored its own approach in exercising its functions as the regulator of health and social care providers in England.
18. The CQC explained that it has processes for providers to check and challenge the factual accuracy of its reports, and other processes, to ensure that the information it publishes is "accurate, robust, evidenced and proportionate". It considers that disclosure which bypasses this could prejudice these processes and result in regulatory unfairness to those providers.
19. The CQC explained that its SLA with IOMDHSC recognises at paragraph 5.6.1 "unpublished information shared under this SLA as being confidential which will not be disclosed without consultation of the originating body of that information."
20. The CQC added that, whilst the SLA recognises CQC's responsibilities under FOIA, it considers that disclosure of draft reports against the wishes of IOMDHSC would prejudice the ability of the CQC to carry out its function of providing advice and assistance to other public authorities (IOMDHSC and others) in future where they are concerned as to the confidentiality of the information held by the CQC.
21. The Commissioner has considered the information that's actually being withheld and the public authority's arguments. He agrees that disclosure would result in the prejudice described above and so he is satisfied section 31(1)(g) is engaged.
22. Since section 31 is a qualified exemption, the Commissioner will now go on to consider where the balance of the public interest lies.

### **Public interest test**

#### **Considerations favouring disclosure**

23. The CQC has recognised the general public interest in transparency, in particular transparency about the work that it carries out, and the way in which it exercises its role of providing advice and assistance to other public authorities.
24. The complainant has argued that there is a significant public interest in disclosure of the draft reports because concerns have been raised with the British Medical Association that the final reports prepared by the CQC were open to further amendments and alterations, at the request of IOMDHSC. The complainant considers that disclosure of the draft reports would reveal any such changes and that there is a public interest in understanding if, and to what extent, IOMDHSC's comments changed the final reports.

### **Considerations favouring withholding the information**

25. In favour of maintaining the exemption, the CQC has considered the public interest in maintaining the trust of IOMDHSC, and other public authorities in the UK and elsewhere, in the CQC's ability to provide advice and assistance whilst maintaining appropriate confidentiality.
26. The CQC considers that there is a public interest in it being able to carry out this work in a manner which applies the same level of protection from regulatory prejudice that applies to the CQC's regulation of providers in England.

### **Balancing the Public Interest Test**

27. The Commissioner recognises the public interest in transparency and accountability and in members of the public understanding more closely how the CQC carries out its regulatory functions. However, the Commissioner does not consider it is in the public interest to prejudice the CQC's regulatory functions.
28. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the draft reports.
29. The Commissioner's decision, therefore, is that the CQC is entitled to withhold the draft reports under section 31(1)(g) of FOIA.

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)

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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**