

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 June 2024

**Public Authority:** Lancashire and South Cumbria Integrated Care Board

**Address:** Jubilee House  
Lancashire Business Park  
Leyland PR26 6TR

### Decision (including any steps ordered)

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1. The complainant has requested copies of reports generated by a corporate services strategic value transformation review. Lancashire and South Cumbria Integrated Care Board ('the ICB') has disclosed the reports' executive summaries but is withholding the full reports under sections 41 and 43 of FOIA. These exemptions concern information provided in confidence and commercial interests, respectively.
2. The Commissioner's decision is that section 41(1) isn't engaged but that the ICB is entitled to rely on section 43(2) of FOIA to withhold the requested information.
3. It's not necessary for the ICB to take any corrective steps.

### Request and response

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4. The complainant made the following information request to the ICB on 3 August 2023:

"Part 1.3 of this paper references work that was commissioned from PwC and PSC –

[https://www.healthierlsc.co.uk/application/files/4116/8796/9061/Item\\_11\\_-\\_System\\_Recovery\\_and\\_Transformation\\_Plan.pdf](https://www.healthierlsc.co.uk/application/files/4116/8796/9061/Item_11_-_System_Recovery_and_Transformation_Plan.pdf)

This work was likely commissioned by one of the ICB's predecessor organisations.

Under FOI laws, please can you provide a copy of the final reports that were produced (if any words/phrases are deemed to trigger an exemption then please redact those only, and provide the rest of the document)"

5. The ICB's final position was that the requested reports were exempt from disclosure under sections 41 and 43 of FOIA.
6. Following their complaint to the Commissioner, on 18 April 2024 the ICB disclosed a copy of the reports' executive summaries to the complainant but is continuing to withhold the full reports.

### **Reasons for decision**

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7. This reasoning covers the ICB's application of section 41 and section 43 to the information it's withholding.

### **Section 41 – information provided in confidence**

8. Under section 41(1) of FOIA, information is exempt from disclosure if (a) it was obtained by the public authority from any other person and (b) disclosing it would constitute an actionable breach of confidence. Section 41 is an absolute exemption and so isn't subject to the public interest test.

### **Did the ICB obtain the information from another person?**

9. The Commissioner understands that the ICB commissioned The Public Service Consultants and Deloitte to produce the reports in question. The ICB's position, in its responses to the complainant and its submission to the Commissioner, is that it therefore obtained the information ie the review reports, from another person.
10. The ICB obtained the information from another person because it commissioned that information from another person – The Public Service Consultants and Deloitte. However, the Commissioner will accept that it did nevertheless obtain it from another person and that the condition under section 41(1)(a) is met.

**Would disclosing the information constitute an actionable breach of confidence?**

11. In order for disclosing the information to represent a breach of confidence, the information:
  - must have the necessary quality of confidence
  - must have been imparted in circumstances importing an obligation of confidence; and
  - must be an unauthorised use of the information to the detriment of the confider.
12. The ICB's submission to the Commissioner quotes back to him his own correspondence to the ICB and published guidance on section 41, which isn't relevant or necessary.
13. Of relevance to the specifics of this case, the ICB says only:

"We also considered that the NHS data that was used to produce the reports is not in the public domain and relates to our system and others across the country which contains detailed pay and non-pay data and other commercially sensitive assessments and recommendations to help inform our position and help with prioritisation."
14. In his correspondence to it which, as noted, the ICB has referred to in its submission, the Commissioner asked it to address the points at paragraph 11. The ICB's submission hasn't clearly addressed those points and it hadn't clearly explained its position in its correspondence to the complainant.
15. It isn't the Commissioner's role to build a case for a public authority. From the ICB's submission he'll accept that the requested information has the necessary quality of confidence and was imparted in circumstances importing an obligation of confidence. However, the ICB hasn't explained why disclosing the reports would cause a detriment to The Public Service Consultants and Deloitte. Nor is it explained how, if the ICB were to breach any confidence and disclose the requested information, The Public Service Consultants and Deloitte would be able to bring actionable breach of confidence against the ICB.
16. The ICB hasn't satisfied the Commissioner that the criteria at paragraph 11 have been met and he therefore cannot find that the requested information engages section 41(1) of FOIA. He's gone on to consider the ICB's application of section 43(2) to the information.

## Section 43 – commercial interests

17. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
18. When he's considering whether section 43(2) is engaged, the Commissioner considers whether the envisioned harm concerns commercial interests and whose interests would be harmed; how disclosing the information would cause that harm and the level of likelihood of the harm occurring.
19. In its submission to the Commissioner the ICB has explained that disclosure would harm the commercial interests of the Lancashire and South Cumbria Provider Collaborative; that is, the Commissioner understands, University Hospitals of Morecambe Bay, Lancashire and South Cumbria Hospital, Blackpool Teaching Hospitals NHS Trust, Lancashire Teaching Hospitals NHS Trust, and East Lancashire Hospitals.
20. The ICB says that the reports contain detailed pay and non-pay data which isn't in the public domain. If this was made available publicly, it says, it would compromise the NHS in Lancashire and South Cumbria in respect of commercial negotiation with markets and suppliers.
21. The ICB has, again, quoted back the Commissioner's guidance on section 43(2) in which he advises that a public authority should demonstrate a causal relationship between disclosure and the envisioned prejudice. But the Trust hasn't then clearly made that link in the specifics of this case. It has simply said:

"Both Deloitte and The PSC were approached for permission to the release the reports, both declined at the time on the basis the reports had been produced as a commercial in confidence commission."
22. However, in its discussion of the public interest test, the ICB has confirmed that the ICB commissioned both reports to help inform a detailed understanding of "granular metrics" regarding the costs of services, how these compare to other providers and systems, "and to seek to understand the drivers of variation." The ICB says that these weren't intended to be an actual case for specific changes to services, but to provide a set of management information to help focus priorities.
23. It considers that if the very detailed pay and non-pay statistics, commentary and comparisons with other bodies were made public, it would compromise its ability to "market manage commercial interests of NHS providers". The ICB says that this would greatly compromise the ICB and lead to significant financial impact.

24. The ICB has also said that disclosing the information may “allow others to undercut competitors and also seek to inappropriately subsidise services to misrepresent savings opportunities in the commercial interests of the ICB.”
25. The Commissioner accepts, first, that the harm the ICB envisions relates to commercial interests, those of the ICB and the Lancashire and South Cumbria Provider Collaborative.
26. Second, having reviewed the reports, the Commissioner will also accept that disclosing the reports would or would be likely to prejudice those parties’ commercial interests. The reports comprise a great deal of detailed financial and performance information about the NHS in Lancashire and south Cumbria.
27. In its submission to him the ICB said that disclosing the reports would,  
“allow others to undercut competitors and also seek to inappropriately subsidise services to misrepresent savings opportunities in the commercial interests of the ICB.”
28. The Commissioner asked the ICB to clarify this statement. The ICB then explained that the reports, the Deloitte report in particular, have very granular details of the costs of providing services. This includes pay costs of employees and the prices of services procured from private companies. Disclosing this into the public domain could lead to a restriction in the ICB’s ability to negotiate new contracts and/or the gaming of prices by companies seeking to undercut current services as a method to gain market access. Releasing the information could unfavourably impact on competitive procurement processes within the Integrated Care System and NHS.
29. The Commissioner will accept that disclosing the full reports would or could be likely to cause commercial prejudice to the ICB and the Lancashire and South Cumbria Provider Collaborative, for the reason the ICB has now clarified. Namely having insight into current costs for services and staff could lead other companies to undercut those bodies or could make it harder for the ICB to negotiate competitively if it were known how much the ICB was prepared to pay for a particular service or if the cost of particular employees was known.
30. The Commissioner doesn’t consider the reports could be appropriately redacted and still remain meaningful.
31. Finally, the level of likelihood of prejudice occurring. Again, the ICB’s submission and correspondence isn’t quite clear on this point. Its position appears to be that the envisioned prejudice would be likely to happen, and the Commissioner will accept this lower level of likelihood.

32. The three criteria at paragraph 18 have been met and so the Commissioner accepts that the ICB is entitled to rely on section 43(2) to withhold the requested information. He'll go on to consider the associated public interest test.

### **Public interest test**

33. The complainant hasn't presented any public interest arguments for the reports' disclosure.
34. The ICB has cited the following as factors that support the information being disclosed:
- FOIA requires public authorities to be open and transparent about their business decisions
  - "Decisions on any competitive tendering and savings are disclosed"
  - The public has an interest in knowing how public funds are spent and in knowing that funds are being used appropriately
  - Disclosure may promote public understanding
  - There's public interest in good decision-making by public bodies
35. In its discussion of the public interest in its correspondence to the complainant and the Commissioner, the ICB has discussed certain factors but, as has been discussed, these appear to be more relevant to the discussion of why section 43 is engaged rather than public interest arguments.
36. However, in its submission the ICB has said that the public interest in the reports is lessened because no decisions have been made using the data in the reports. It also says that prejudicing the commercial interests of the NHS in Lancashire and South Cumbria would exacerbate pressure on front line service delivery and that that very clearly wouldn't be in the public interest.
37. And against disclosure, the ICB has also said that it believes that it has been sufficiently open in its board meetings about the financial position of the Lancashire and South Cumbria health and care system which, it says, remains one of the most financially challenged economies.

## **Balance of the public interest**

38. The Commissioner notes that the ICB has now disclosed the reports' executive summaries. He also notes that other relevant information is published in the minutes of its Board meetings. In the absence of any compelling arguments for the requested information's disclosure, the Commissioner considers that these factors adequately address the public interest in transparency about the financial situation of the NHS in Lancashire and South Cumbria. He's also taken account of the fact that these reports haven't been used as tools to make decisions about changing services, but as tools to manage priorities.
39. The ICB and Lancashire and South Cumbria Provider Collaborative should be able to operate from as robust a financial position as possible. They shouldn't be faced with their operations being undermined or 'gamed' by competitors and customers, or by not being able to negotiate from a strong position. Therefore, in the interests of the public who use their services, and in the interest of taxpayers, the Commissioner is satisfied that there's greater public interest in withholding the reports the complainant has requested.

## **Right of appeal**

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40. 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)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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**Information Commissioner's Office**  
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