

Our ref:
Please contact:
Email:
Personal assistant:
Direct tel:

18 June 2024

Dear,

Re: Your request for information under the Freedom of Information Act 2000
Ref no: FOI-3460-LSC

Thank you for your request dated 10 August 2023, in which a response was provided on 28 December 2023. Following your request for an internal review dated 8 January 2024, please find enclosed an updated response:

Original request:

We understand that Trust does not hold any contracts with the CHEC/RMC, as their contract is an ICB commissioned contract. Therefore, we anticipate that the relevant contract will be held by ICB. Please could you confirm whether there is any contractual relationship between CHEC and RMC and the trust. If there is, please could you provide any contracts / documentation to assist with our investigations.

Response:

NHS Lancashire and South Cumbria ICB holds a contract with the RMC to manage referrals for the Central Lancashire and Blackpool and Fylde localities. We also have contracts with CHEC to deliver Ophthalmology activity and Cataract Surgery across Lancashire and South Cumbria, in addition we have an acute contract with Lancashire Teaching Hospitals. We do not hold a contract that specifically connects the three organisations.

Updated request:

I would be grateful if you could please provide copies of the contracts referred to in your responses.

Response:

A copy of the contract which includes the RMC service line is attached. This was signed off last year, but please note that a contract variation for 2024/25 has been completed to reflect the latest contractual position. There are no changes to the RMC so this document should be sufficient.

However, Lancashire and South Cumbria (LSC) ICB are withholding the CHEC contract. We are not obliged to provide this contract as we believe that the information would, or would be likely to, prejudice the commercial interests of the ICB (section 43(2) of the Act) and the

disclosure of the information would constitute a breach of confidence (section 41(1)(b) of the Act).

Section 41(1) of the FOI Act states that:

“Information is exempt information if –

- it was obtained by the public authority from any other person (including another public authority), and
- the disclosure of the information to the public (otherwise that under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Further details of section 41 can be found on the ICO website on the link below:

<https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

Lancashire and South Cumbria (LSC) ICB have liaised with CHEC to determine whether they would deem the information within their contracts as confidential and whether they wish to enforce that confidentiality. CHEC confirmed that they do not give permission for its contract particulars to be shared as part of the FOI response.

Under the section 41 exemption, CHEC expects the contract with LSC ICB to remain confidential as per correspondence made between the two organisations. Not complying with this contract would provide a basis for an actionable breach of confidence. Therefore, we are unable to release the full contract.

In line with the terms of these exemptions in the Freedom of Information Act, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemptions being applicable. In this case, we have concluded that the public interest favours withholding the information under sect 43(2) Commercially sensitive.

You can find out more about Section 43 by reading the extract from the Act and some guidance points we consider when applying this exemption along with more information by reading the full text of the Act, available at: <http://www.legislation.gov.uk/ukpga/2000/36/section/43>

When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure

- The FOIA requires that public sector organisations are open and transparent in relation to their business making decisions.
- Public have an interest in knowing how public funds are spent and know that funds are being used appropriately.

Public interest considerations favouring withholding the information

- Disclosure of the information could prejudice the commercial interests of the provider. The release of this information may also lead to legal proceedings if independent sector contracts are published.
- There is potential harm to CHEC by disclosing information within their contracts, as this may be of interest to potential competitors (within an extremely competitive provider market). Disclosure would allow other providers to secure an advantage over CHEC when competing for future business.
- CHEC have advised that the contracts are confidential and wish to enforce that confidentiality, by releasing this information this would likely damage the provider's

ability to win new business as other providers would be aware of their pricing and service models.

- Providing this information would be a breach of confidence and would likely impact the ICB's future relationship with CHEC.

Having considered the arguments for and against disclosure, Lancashire and South Cumbria ICB decided that the public interest in this case is best served by maintaining the exemption and by not disclosing the information requested. Lancashire and South Cumbria ICB considers that the possible benefits of disclosure are outweighed by the real risk of causing prejudice to the commercial interests of the ICB itself. In this case there is an overriding public interest in ensuring that companies are able to compete fairly and in ensuring there is competition for public sector contracts.

We reached the view that, on balance, the public interest is better served by withholding this information under Section 43(2) and Section 41(1)(b) of the Act at this time.

Right of Appeal

Should you require any further information or clarification regarding this response please do not hesitate to contact us. If you are dissatisfied with the response, you are entitled to request an internal review which should be formally requested in writing and must be within two calendar months from the date this response was issued.

To request an internal review

You can request this by contacting the FOI team by email at MLCSU.FOITeam@nhs.net or by post to Jubilee House, Lancashire Business Park, Leyland, PR26 6TR, specifying why you require a review.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the CCGs FOI complaints procedure. The ICO can be contacted at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
www.ico.gov.uk

Yours sincerely

Sam Proffitt – Chief Finance Officer

**On behalf of Kevin Lavery
ICB Chief Executive**