

Please contact: Access to Information
Team
Email: MLCSU.FOITeam@nhs.net
Direct tel: 01782 916875

Level 3, Christ Church Precinct
County Hall
Fishergate Hill
Preston
PR1 8XB

2 January 2024

t: 0300 373 3550
www.lancashireandsouthcumbria.icb.nhs.uk

Re: Your request for information under the Freedom of Information Act 2000
Ref no: FOI-3408-LSC

Thank you for your request dated 02 August 2023 in which a response was provided on 29 September 2023. Following your request for a review dated 12 October 2023, please find enclosed an updated response:

Original request and response:

1. 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/Item11System_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)

NHS Lancashire and South Cumbria ICB do hold the reports named above. However, in accordance with the Freedom of Information Act 2000, Section 41 sets out an exemption from the right to know, where the information was provided to the public authority in confidence.

Information will be covered by Section 41 if;

- it was obtained by the authority from any other person.
- its disclosure would constitute a breach of confidence.
- a legal person could bring a court action for that breach of confidence, and
- that court action would be likely to succeed.

When determining if disclosure would constitute a breach of confidence, the authority will usually need to consider:

- whether the information has the quality of confidence,
- whether it was imparted in circumstances importing an obligation of confidence, and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

We have determined these reports were produced and obtained from another person and were provided in confidence, therefore Section 41(1)(a) exemption is engaged.

We have also considered the detail of these reports which contains detailed pay and non-pay data and other commercially sensitive assessments and recommendations to help inform our position and help with prioritisation.

Section 43(2) exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity).

Disclosure of the requested information could prejudice the ICB if the information is released in the public domain. This is a qualified exemption under the FOI Act which means that consideration must also be given to whether in all the circumstances of the case the public interest favouring disclosure is greater than the public interest in maintaining the exemption.

The public interest means what is in the best interests of the public not what is of interest to the public.

We have considered whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

There are a number of public interest arguments that weigh in favour of disclosing the information you have sought:

- The FOIA requires that public sector organisations are open and transparent in relation to their business making decisions.
- Decisions on any competitive tendering and savings are disclosed
- Public have an interest in knowing how public funds are spent and know that funds are being used appropriately.
- Disclosure may promote public understanding.
- There is public interest in good decision-making by public bodies.

However, there are also public interest arguments against disclosure:

- Identified commercial interest
- Disclosure of 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
- There is a high likelihood that disclosure would adversely prejudice the ICB in its own commercial interests and future strategy to deliver savings and financial recovery above 75%
- We consider that the link between disclosure and prejudice has substance, more than 75% and would have effect on the applicable interest of the ICB and associated providers within the ICS.
- It is highly likely that by sharing these documents there would be significant prejudice occurring and impacting on the ICB commercial interests.

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

Request for an internal review:

The response cites section 41, suggesting the info was provided to the ICB in confidence. It's unclear exactly to what this refers, but I note the reports were commissioned by the ICB. It is extremely common for public authorities to release reports commissioned from independent consultants, where they themselves are the commissioner and 'owner' of the information. It appears the ICB does own this information.

The response may suggest that other organisations have provided information to the consultants in confidence. However, I would argue that these organisations are part of the same integrated care system, which has a statutory basis. I believe it is therefore incorrect to characterise the other ICS organisations as separate entities that have provided information in confidence. These reviews appear to be system-wide reviews, for the benefit of the whole system and not just the ICB. The ICB is the effective leader of the system so should be able to release any information about the system which has been collected without worrying about it being provided in confidence.

The response also cites section 43, claiming the release of information could prejudice commercial interests. While I don't dispute there may be *some* information within the report, such as financial figures, to which this applies, it seems very unlikely the entire reports would qualify for this exemption (which also goes for exemption 41). In the original request, I suggested any excerpts deemed to trigger an exemption could be redacted. Please can this be reviewed by the appropriate officer.

Updated response:

NHS Lancashire and South Cumbria ICB have reviewed this request, but maintain their position that the section 41 and section 43(2) exemptions are still applicable in this case for the reasons provided in the original response.

However, if you wish to make a request asking for further information then the ICB are happy to treat that as a new request.

Reviewed by Joe McGuigan Deputy SIRO

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 40 working days 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 Leyland 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, Wycliff House, Water Lane, Wilmslow, Cheshire, SK9 5AF
www.ico.gov.uk

Yours sincerely

**Joe McGuigan - Lancashire and South Cumbria ICB
ICB Director of Digital Operations and Assurance**

On behalf of Kevin Lavery - ICB Chief Executive

