



Our Ref: PW/AKB/FOI-06-421

23rd October 2023

Stafford Education & Enterprise Park
Weston Road
Stafford
ST18 0BF

Sent by email

Telephone: 0300 123 1461

Dear

FOI-06-421

Your request for information under the Freedom of Information Act 2000

Thank you for your request received on the 22nd September 2023 regarding our response of the 23rd August 2023 in which you have asked for your request to be reviewed.

We can confirm that the Staffordshire and Stoke-on-Trent Integrated Care Board has reviewed your FOI request as below:

An anonymised copy of this response will be made publicly available on the ICB website.

Please see our responses in blue below:

With regard to the Section 21 exemption, this is not valid in the case as my request relates to individual invoices of all values, with more information fields than is provided in any of the links you have shared (hence my request for information).

The summary information requested can be found within the statutory annual accounts which is published within the Annual Report. I have not requested summary information.

Please review my request and deal with it appropriately.

The details you requested under the Freedom of Information Act (FOIA) were initially covered by our 'Section 12' Letter (26th June 2023), stating that individual invoice details and multiple information fields was held by the ICB, according to:

Question	Information can or cannot provide within the timeframe to complete an FOI request and avoid a cost implication.
The name of the Supplier	Information able to be supplied.
Supplier email address	Information able to be supplied.

Question	Information can or cannot provide within the timeframe to complete an FOI request and avoid a cost implication.
Supplier postal address	Information able to be supplied.
Supplier telephone number	Information able to be supplied if held on our system.
Supplier website	This information is not held on our system as standard
The date of the Invoice	Information able to be supplied.
The Invoice reference	Information able to be supplied.
The gross value of the Invoice	Information able to be supplied.
The date the Invoice should have been paid by	Information able to be supplied.
The actual payment date of the Invoice	Information able to be supplied.
The total amount of interest liability due to late payment of the Invoice	This would involve reviewing thousands of Invoices in order to calculate the amount of interest liability.
The total amount of interest paid to the supplier due to late payment of the Invoice	This would involve reviewing thousands of Invoices in order to identify any interest payments made (this is not separately coded within our financial ledgers).

This letter sets out the reasonable balance between our duties of transparency and the protection of public resources. As based on having carried out preliminary searches for initial parts of the requested information and having set that out against the scope of the financial years covered and items of financial data requested.

The ‘Searching Basis’ to support our Section 12 application was within scope of estimating the costs of compliance with your request in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 and supported by internal knowledge of the ICB Finance team and Records Management personnel. The searches were complete and extensive. Finance staff followed ICB Standing Financial Instructions procedures to ensure they make good use of public resources and support available to them when searching for, locating and potentially retrieving information held in various systems.

Our letter of the 26th June 2023 also clearly gave clear advance notification of the potential for a Section 43(2) application to the information requested of us. The ICB’s legal rights to disclosure under FOIA remain subject to prejudice of our commercial interests as a Public Authority. Specifically in relation to the ICB’s ability to participate competitively in commercial activity using public monies. Considering your request duly factored in our ensuring that we are able to cover our costs, and to remain solvent / not at financial risk, we therefore labelled the relevant items of data from your request as able to be supplied, not necessarily will be supplied.

We did this openly in order to be both reasonable to your rights, and our own rights to consider any request under relevant prejudice-based exemptions that may rule certain information requested as exempt pending “Public Interest Test and “Prejudice Test” applications. As covered in our final reply letter of 23rd August 2023.

In response to the specific points you have since raised in asking us to review our formal reply, please note that the 26th June 2023 letter also stated that all the invoices in question had all been settled with service providers. Thereby ensuring that public money is being used effectively; and that the ICB obtained value for money when purchasing those goods and services covered by these invoices. Furthermore, and in relation to the other points in your email to us of the 22nd September 2023, our Annual Accounts are produced according to NHS-wide accounting and public transparency principles, including full audit by External Auditors. Therefore, duly providing “a better understanding of how public funds are spent and help ensure that the ICB is following proper processes.”

NHS Staffordshire and Stoke-on-Trent Integrated Board’s External Auditors are charged with establishing whether the Annual Accounts produced by the organisation reflect a ‘True and Fair’ view of the financial statements and that they have been completed in line with International Accounting Standards and the NHS Group Accounting Manual.

As part of their review External Auditors will test the appropriateness and accuracy of the value of their creditors (or outstanding liabilities) contained within the Statement of Financial position which would include any outstanding debts in relation to late interest payment charges.

NHS Staffordshire and Stoke-on-Trent ICB and its predecessor organisations (Clinical Commissioning Groups) have received unqualified opinions from their External Auditors in respect of every financial year that the FOI request relates to.

We also clearly stated that the application of interest to those invoices, including potentially making that information available to any or all Third Parties not subject to those commercial transactions, was determined to not balance well against the wider Public Interest to know what is otherwise unrequired to be published data. That is, the request’s contents clearly exceeded the level of reporting obligations set out under Regulation 113 of the 2015 Public Contract Regulations (PCR).

Therefore, the Section 21 exemption was specifically applied in conjunction with our 2015 Public Contract Regulation (PCR) section 113 obligations, as signalled in our initial response of the 26th June 2023 FOI Section 12.

As in Regulation 113, section (7) of the PCR requires us to:

Every financial year, each contracting authority shall publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied with its obligations under this regulation to make payments within 30 days, including:

- (a) the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations;*
- (b) the total amount of any liability (whether statutory or otherwise) to pay interest which accrued by virtue of circumstances amounting to a breach of those obligations; and*
- (c) the total amount of interest actually paid in discharge of any such.*

Therefore, our Section 21 application - an absolute exemption under FOIA - was intended to uphold our position that the Annual Reports of the ICB and its predecessor CCGs covering the years requested “for all financial years 2016 to 2023 inclusive” clearly publish the above 2015 PCR requirements, transparently to the public, are therefore reasonably available to the Requestor by other means, in ICO terms: e.g. through our website. Any FOIA request for that which is not required to be in the public domain do fall within the rights available to us to determine if we are to release held information.

This means we feel we do comply with the wider principle of FOIA in that [from ICO’s webpage] *‘The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways: (1) public authorities are obliged to publish certain information about their activities; and (2) members of the public are entitled to request information from public authorities.’*

We have through publication of signposted Annual Reports duly met our obligations under the 2015 PCR to publish certain information required. Your request therefore falls into subset (2) of the ICO Guidance above, in that the public are entitled to request information from the ICB as a Public Authority.

However, we dispute your assertion that “The purpose of the Freedom of Information Act is to hold public bodies accountable for their acts, omissions, and practices, and how they negatively impact the public finances.” The FOIA is for the public to be entitled to request information from the ICB as a Public Authority.

The FOIA also clearly provides that any Public Authority does not necessarily have to publish everything that is requested of it under that entitlement. This is why we applied lawfully-available exemptions and duly applied the requisite Public Interest / Prejudice Tests for our Section 43(2) exemption, which we will expand on further in the second part of this reply.

Your request covered information that is not usually expected or otherwise required to be put into the public domain, according to ICO's Model Publication Scheme guidance, NHS England accountability requirements, 2022 Health and Care Act requirements nor indeed the PCR 2015 themselves. If there was such an expectation on us to publish those details requested under FOIA, we would have already published these, thereby removing the need to have requested them in the first place.

So, in summary for this part of your review request, we wish to state our belief that we are in no way "restricting scrutiny" through our Annual Reports and Accounts publications, as applied under the Section 21 exemption. The public see these in full and are invited to attend our Annual General Meetings to raise specific questions of the Board. As is also the case for any matter at an ICB Board meeting held in public, where the public are free to ask any question of the ICB about its business practices. We also wish to finally restate that the PCR 2015 give no right to the public under FOIA or any other Common Law to see everything a Public Authority holds. This is why FOIA clearly sets out to the public certain restrictions on their rights to request information. The ICB also has rights to withhold or exempt that if it so wishes to.

With regard to the Section 43(2) exemption, I would like to emphasise the public interest in favour of disclosure of the requested information which include:

- **Promoting transparency and the accountability of the use of public funds.**
- **Ensuring that public money is being used effectively, and that the ICB is obtaining value for money when purchasing goods and services.**
- **Provide a better understanding of how public funds are spent and help ensure that the ICB is following proper processes.**

- 1. Please can the ICB point out specifically which elements of my request are considered to prejudice the commercial interests of those involved.**

My request does not include for the divulgence of what the suppliers have provided and therefore no commercial advantage could be gained without knowing what was invoiced and in what quantities.

The procurement process presumably would not change as a result of fulfilling this FOI request e.g. tenders would still be assessed in a fair and proportional manner, and checks on supplier viability would continue as they should. I do not see how any of the arguments against releasing the information would outweigh the Public Interest in knowing how taxpayer money is spent.

The purpose of the Freedom of Information Act is to hold public bodies accountable for their acts, omissions, and practices, and how they negatively impact the public finances. By the ICB claiming a Section 43 exemption it is only serving the ICB's purposes and restricting such scrutiny.

In light of the above, I therefore request a reconsideration of the refusal. If the refusal is maintained, please conduct an Internal Review.

Thank you for your attention to this matter, and I look forward to receiving your response.

In light of your email request for us to reconsider our formal reply back in August, we have duly reconsidered this and chosen to undertake a formal review of our approach. As you also asked us for this after reconsidering, we have treated your email as a formal FOIA complaint to us and made that subject to our internal review procedure where several outcomes are possible:

- Our original decision is upheld, or
- Our original decision is reversed in part or in full, or
- Our original decision is modified

Internal reviews are handled by our Corporate Governance Team. They are responsible for reviewing the decision and the material (if held) with the local ICB Team best-placed to advise on local records management. Other ICB staff may also be involved before reaching a decision; where the final decision will be made by:

- The Internal Reviewer or
- Another senior member of staff not involved in the original decision

In conducting this process, we've considered whether:

- FOIA has been properly applied: whether the information requested genuinely falls within the exemption(s) cited and if any balancing of public interests favours non-disclosure
- There have been any developments since the original response; including the points you made
- It's possible to provide you with any further information, and
- If there are any lessons for handling future cases

The first element of the internal review has looked at how we applied Section 43(2) to your request. In doing so, we need to restate the ICO's own guidance that the main principle behind FOIA legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as the presumption or assumption in favour of disclosure. However, this is also the gist of the balancing test principle that we sought when applying our Section 43(2) exemption to your request. The ICB adjudged reasonable application of the exemption as fulfilling the ICO's guidance as a "good reason not to" and which itself was explained in our response, and again also reconsidered as part of this review.

Section 43(2) is a 'Prejudice-based Exemption' which says that information is exempt if its disclosure under FOIA would, or would be likely to, prejudice the commercial interests of any legal person (including the ICB as the Public Authority holding it). There are many circumstances in which your request might mean disclosing information held has the potential to prejudice our commercial interests. These were

covered in the original Public Interest Test and Prejudice Test outcomes that we shared in our final reply.

However, as you asked us to reconsider these, as communicated to you in our formal reply in August, please note the following reconsidered (internally reviewed) matters.

A Commercial Interest in the context of this request applies to the ICB as the Public Authority paying for the invoices for goods and services rendered to it. There is also potentially the service providers themselves as parties to that service provision relationship too. Non-disclosure did also consider their own common law rights to not be identified by virtue of the items of information requested in the original request. However, as these number in the thousands, given the years covered by your request, we could not feasibly engage with each provider in order to ask for their consent for their business data to be released by ICB, so we focussed predominantly on our own interests as the Public Authority; undertaken in the taxpayer's name and as accountable to the Secretary of State, via Department of Health & Social Care (DHSC) and NHS England.

Our Commercial Interests also relate to our ability to participate competitively in commercial activities when commissioning healthcare services for our population, to secure best value for the taxpayer. Duly adhering to financial policy like the 'Better Payment Practice Code', where ICB Accounts Payable staff need to maintain compliance at or above 95%; because otherwise we don't meet the target set by DHSC.

It is also particularly important to make prompt payments to suppliers to be able to cover their and our own costs involved in processing these transactions. It is perhaps worth highlighting that the BPCC target for the NHS is 95%. Therefore 100% settlement within the required timescales is not required for NHS organisations. We do though, like others, aim to pay at least 95% of our invoices within the agreed terms, unless there is a dispute. Achieving 100% would require greater employment of non-clinical staff at the cost of frontline staff, which would not in and of itself represent best value for the taxpayer.

Secondly, we reviewed what 'Prejudice' means in the context of our Prejudice Test determinations. We applied the legal term, where prejudice is commonly understood to mean harm. In that disclosure of the requested information is "to the world", not just to yourself and release of those details would prejudice our commercial interests and would be likely to harm those belonging to the wider NHS too in the context of the 95% BPCC requirement. Public money should not be used to achieve a target well in advance of that set of us by the DHSC on behalf of the Government.

As FOIA disclosure under our Disclosure Scheme means putting all the requested information on our website, so any Third Party with no relationship to the ICB or the contracted / commissioned service provider could use that information to perform what we could perhaps bluntly call "Ambulance Chasing" behaviour. In seeking VAT

settlements on top of invoices already clearly paid and to the detriment of the public purse.

This is absolutely not deemed to be in the Public Interest as that would solely be for those 'Third Party agents' own financial gains, at the cost of our population's need for healthcare services. Diverting unbudgeted financial resources to settling something NOT previously disputed by the invoiced party themselves, would only come out of the ICB's annual allocation for buying frontline healthcare services. This is why we applied the S.43(2) exemption to those items. Releasing these details would inevitably lead to that situation arising.

There are also certain potential procurement aspects to consider as our Commercial Interests when it comes to our statutory role in the purchase of goods and services. Including services outsourced to private companies, to be delivered on our behalf to our population. Therefore, we hold a wide range of commercial information relating to the procurement process that includes details of the contract agreed with the successful bidder (those contact details you requested); and performance information about a contractor.

The ICB's Commercial Interest also covers the commercial information held to assist our development and implementation of policy in particular areas. For example, commissioning policy aimed at a particular cohort of eligible healthcare providers. Those commercial entities might not wish to engage with the ICB as its suppliers if they know that we have divulged their information that is not in the public domain. Serving the Public Interest by releasing those when we already have a publicly available Procurement Register is not felt conducive to the conduct of our commercial / business affairs and statutory duties to encourage economic development. Release of non-public domain required information would not serve the Public Interest if doing so risked the ICB's solvency in terms of budgetary pressures on scarce taxpayer-granted resources.

In reviewing your request and our original response, we believe we have now more clearly identified what the Prejudice Test harm is to us, and why it may occur as a result of disclosure. It is strongly believed that there is a more than 50% chance of disclosure causing the prejudice. We cannot be absolutely (e.g. 100%) certain that it would do so; but disclosure 'to the world' under our FOIA Disclosure Scheme certainly significantly raises that risk well above 50% probability levels. We thus feel we have clearly (as indeed we did in our initial reply) demonstrated a strong causal relationship between the disclosure of the information in question and the prejudice we envisage.

These were the circumstances that existed at the time the request was made and our reply that followed. Those circumstances have not since changed with the passage of time. Therefore, our adjudication that the information which was exempt from disclosure is still not in our opinion eligible for release. Its sensitivity has not diminished any less.

Furthermore, we would maintain the position initially provided in that most of the information requested remains generally recognised as being commercially sensitive information, because it is about our procurement of goods and services in terms of details pertaining to ICB to supplier transactions.

Therefore, in summary, after reviewing your request and our reply, we wish to notify you that we would want maintain our previously-applied position on this and that we wish to continue considering the balance of the Public Interest favouring continued exemption from disclosure because of clear prejudice to our Commercial Interests, as outlined above.

We did consider a strong public interest in openness, but not to the greater risk of overriding all other use of public resources arguments, especially when having settled the invoices in question already and those not having been challenged by the providers were paid beyond the 95% BPC target set of us.

The Public Interest in terms of scrutiny of what we are obligated to do as per PCR 2015 requirements have already been transparently disclosed within our Annual Reports & Accounts, which follow DHSC disclosure rules and accountabilities guidance to the letter, thus allowing the public to scrutinise how we have spent their monies allocated to us for the purposes of commissioning healthcare services.

The public has a clear understanding of how we spend their money through these publications, so we feel this can duly show our integrity and our ability to effectively allocate public funds. We do not feel that disclosing information that is never required to be in the public domain according to all available national guidance currently to be in the Public Interest, as doing this sets a dangerous precedent for all NHS organisations to follow. Resulting in there being public money being spent on solely non-healthcare provision matters, which cannot be seen as good value for the public purse.

Protection of the public means there are stronger Public Interest arguments in not allowing access to information that risks public funds being exposed to potentially, non-Public Purse value-adding practices. The damage would clearly be disproportionate when compared against the reasons favouring disclosure, so in summary there remains we feel, a stronger Public Interest in withholding this information under the various sector-specific codes, regulations and pieces of legislation we have cited.

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.

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 Staffordshire and Stoke-on-Trent Integrated Care Board's 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

Paul Winter
Associate Director of Corporate Governance