

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2015

Public Authority: Calderdale & Huddersfield NHS Foundation Trust

Address: Huddersfield Royal Infirmary
Acre Street, Lindley
Huddersfield
HD3 3EA

Decision (including any steps ordered)

1. The complainant has requested information relating to an "Outline Business Case" (OBC).
2. The Commissioner's decision is that Calderdale & Huddersfield NHS Foundation Trust has incorrectly applied section 22(1) of the FOIA in its response to the request.
3. As the information has already been made public the Commissioner does not require the Trust to take any steps as a result of this decision notice.

Request and response

4. On 14 July 2014, the complainant wrote to Calderdale & Huddersfield NHS Foundation Trust (the Trust) and requested information in the following terms:

"I understand that CHFT, along with Locala and the South West Yorkshire Partnership Foundation Trust, has prepared an Outline Business Case for their proposals for the reconfiguration of health and social care services in Calderdale and Greater Huddersfield, that is based on the Strategic Outline Case that the 3 providers produced earlier this year.

Under FOI regulations, I would like to request a copy of this Outline Business Case."

5. The Trust responded on 23 July 2014. It refused to provide the requested information and cited section 43(2) of the FOIA as its basis for doing so.
6. Following an internal review the Trust wrote to the complainant on 14 October 2014 and revised its position. It no longer appeared to be relying on section 43. The Trust advised that it would provide a redacted version of the information to the complainant by 24 October 2014. However, on 29 October 2014 the Trust wrote to the complainant again and advised that all the information would be made public on a future date and therefore cited section 22 of the FOIA.
7. The information was published in its entirety on the Trust website on 28 November 2014. A copy was also sent to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 29 October to complain about the way her request for information had been handled.
9. Following further correspondence the Commissioner has confirmed with the complainant that the scope of this case is to determine if the Trust correctly cited section 22 of the FOIA in its response to the request for information.

Reasons for decision

10. Section 22 Information intended for future publication

(1) Information is exempt information if -

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

11. In order to determine whether section 22 is engaged the Commissioner therefore considered the following questions:

- When the complainant submitted the request, did the Trust intend to publish the information at some date in the future?
 - If so, had the Trust determined this date when the request was submitted?
 - In all the circumstances of the case, was it 'reasonable' that the Trust should withhold the information from disclosure until some future date (whether determined or not)?
12. The Trust subsequently explained to the Commissioner that at the time of its original response to the complainant it was unclear what elements would be disclosed so there was no settled intention to publish the OBC in its entirety. Therefore section 43(2) was applied.

(a) Was the information held with a view to its publication at a future date?

13. Section 22 applies only when the requested information is held by a public authority with a view to publication, by that public authority or another body, at the time the request was received.
14. The Trust has provided the complainant and the Commissioner with a copy of the published information and indicated that this was all the information that was within the scope of the request.
15. The Trust stated that the information would have been published at the consultation phase, although the specific date was not known at the outset. At the time the request was received no deadline date had been set for tenders. However, by the time the Trust issued its response the deadline date had been published.
16. The date of publication does not need to be definite for the exemption to apply. There will be some information that is compiled as part of a scheduled procedure which includes a planned publication date. The date of publication of other material may be less certain, for example:
- a deadline may be provided, but publication could be at any time before then;
 - publication will take place once an information gathering exercise has been completed; or
 - by reference to other related events.
17. The Commissioner has discussed with the Trust the process involved in compiling the OBC. The Trust explained that it was a jointly authored document written for the Clinical Commissioning Group (CCG) but the

Commissioners would determine what, if any, parts would be published. Publication would be expected if the CCGs intended to 'test' or consult on specific elements of the OBC.

18. The Trust provided the document to the Commissioners in June 2014. However, there was a delay in the CCGs responding. In September 2014 the Commissioners informed the providers that they did not intend to pursue the model for hospital services in line with the OBC. The Commissioners released a tender for provision of community services in Kirklees in October. It was at this point that section 22 was applied as the intention was to publish after the tenders had been submitted.
19. The Trust went on to explain that as the OBC set out a proposed model for the provision of community services, the request was reviewed and an initial decision made that the document could be released but with the community model redacted.
20. As the Trust were working towards producing the redacted document it stated that it became clear that, once the first submission for the tender had been completed, the full document would be disclosed.
21. Having considered the representations provided by the Trust the Commissioner considers that it was incorrect to apply section 22 as **at the time of the request** there was no settled intention to publish. Therefore the exemption is not engaged and he has not gone on to consider the public interest
22. As the full OBC has now been published however the Commissioner does not require the Trust to take any further action.

Other Matters

23. The Commissioner acknowledges that the Trust's position regarding the reconfiguration of health and social care services changed following the request and therefore it was attempting to explain this to the complainant by applying section 22 and subsequently indicating it could release a redacted version of the OBC

24. However this approach only served to complicate the position and the Commissioner would remind the Trust of its guidance on section 22¹ and the importance of only being able to take into account the circumstances at the time the request was made. Although the Commissioner has not made a decision on section 43 as the Trust subsequently dropped its application of this exemption this would appear to have been a more appropriate exemption for the Trust to have considered at the time the request was made.

¹ https://ico.org.uk/media/for-organisations/documents/1172/section_22_information_intended_for_future_publication.pdf

Right of appeal

25. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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Wycliffe House
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SK9 5AF