

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2024

Public Authority: NHS Coventry and Warwickshire Integrated Care Board

Address: (HQ Westgate House, Warwick)
c/o Parkside House
Quinton Road
Coventry
CV1 2NJ

Decision (including any steps ordered)

1. The complainant requested information from NHS Coventry and Warwickshire Integrated Care Board ('the ICB'), relating to the South Warwickshire Community Hospital Bed Review. The ICB cited section 22 of FOIA and refused to provide the requested information because it was intended for future publication.
2. The Commissioner's decision is that the ICB was correct to apply section 22 of FOIA at the time of the request.
3. No steps are required as a result of this notice.

Request and response

4. On 26 July 2023, the complainant made the following request for information to the ICB:

"Can you please send me the full South Warwickshire Place Community Hospital Bed Review."

5. The ICB responded on 15 August 2023. It refused to provide the requested information, citing section 22 of FOIA (information intended for future publication).
6. On 26 October 2023, the ICB provided its internal review response and maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 20 October 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the ICB has correctly cited section 22 of FOIA to withhold the requested information.

Reasons for decision

Section 22 – information intended for future publication

9. Section 22(1) of FOIA says that 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 (a).
10. For the exemption in section 22 to apply, the public authority must have a settled expectation that the information will be published at some future date – even if no precise date has been set.
11. Section 22 is a qualified exemption which means it is subject to the public interest test.
12. In this case the ICB has clearly explained in its responses to the complainant that it intends to publish its Community Hospital Bed Review within the next 12 months as part of an outcome report relating to a pre-consultation business case process.

13. The ICB has stated that a pre-consultation business case is published as routine as part of the public consultation process. The business case would usually include all background information which has been used to inform it, and that this would include the bed review. The ICB anticipated the pre-consultation business case process would take six to nine months and it now expects to publish the requested information in summer 2024.
14. As the Community Hospital Bed Review was discussed at an ICB Board meeting on 19 July 2023, and an accompanying update briefing published on the ICB's website, the Commissioner considers that the review report was clearly held by the ICB at the time the request was made, and that the information was intended for future publication as communicated to the complainant.
15. The ICB has explained that, although the bed review will form part of the pre-consultation business case, it will not form the whole business case and will only provide one aspect of the areas which the business case will consider. Therefore, it considers viewing the bed review in isolation of additional information, which is yet to be gathered, will create significant risk of misinterpretation, and potentially put the consultation at risk.
16. The Commissioner has considered the ICB's position and accepts that in the circumstances it was reasonable for the ICB to withhold the requested information under section 22 of FOIA until the future publication date.

Public interest test

17. As the Commissioner is satisfied the exemption was applied correctly in this case, he has next considered the balance of the public interest test.

Public interest in disclosing the information

18. The complainant has argued that South Warwickshire University NHS Foundation Trust had already announced that Shipston would lose its community beds at the Ellen Badger Hospital, based on the result of the analysis contained in the South Warwickshire Community Bed Review. The complainant added that, for the public in the Shipston area to understand this decision, they need full transparency of how it was made and therefore stated that the Community Hospital Bed Review should be published.
19. The ICB recognised the general public interest in openness and transparency in its decision-making process.

20. The ICB also assured the complainant in its internal review response that it had a statutory obligation to conduct a rigorous process when considering any potential significant changes to services. It advised that no decisions would be made on the South Warwickshire Community Bed Review without the public being properly involved.

Public interest in maintaining the exemption

21. The ICB said that the risk of providing the requested document before the pre-consultation business case had been completed would be that the findings would not be given in context, or alongside the actions resulting from the findings and recommendations. The ICB considered that this could cause worry amongst patients and the public if they were to draw conclusions based on incomplete information. The ICB considered that this could also cause a large volume of contacts for the ICB or reputational damage, or both.

Balance of the public interest

22. The Commissioner recognises the public interest in openness and transparency. He acknowledges the public interest in potential plans to change community healthcare provision and concerns about the potential impact any changes may have. However, he also recognises the ICB's commitment to complete its pre-consultation business case process to ensure that the rationale for any decisions made is accurately evidenced and recorded.
23. Having taken the arguments into account, the Commissioner considers that the balance of the public interest favours maintaining the exemption. There is a public interest in transparency but, in this case, there's greater public interest in allowing the ICB to publish the requested information to its planned schedule. This is to ensure the public is provided with all the relevant context and rationale and reduce the risk of people becoming concerned unnecessarily.

Other matters

25. The Commissioner notes that the ICB failed to carry out an internal review within 40 working days. The Section 45 Code of Practice advises all public authorities to carry out internal reviews in a timely manner and within 20 working days. A total of 40 working days is permitted in particularly complex cases only.
26. The ICB is reminded of the requirements of the Code and of the importance of carrying out internal reviews in a timely manner and in accordance with the timeframes specified in the Code.

Right of appeal

27. 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

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

28. 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.
29. 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

**Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**