

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 March 2025

**Public Authority:** Lincolnshire Partnership NHS Foundation Trust

**Address:** Trust Headquarters  
St George's  
Long Leys Road  
Lincoln  
LN1 1FS

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Lincolnshire Partnership NHS Foundation Trust ("the Trust") regarding a Business Case presented internally in March 2024.
2. The Commissioner's decision is that the Trust has not demonstrated that the requested information is commercially sensitive and therefore the exemption at section 43(2) is not engaged.
3. The Commissioner therefore requires the Trust to take the following step:-
  - disclose the requested information to the complainant
4. The Trust must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 28 April 2024 the complainant submitted a request for information:-  
  
"Please provide a copy of the Business case which was presented to the Lincolnshire system in March 2024 to look at establishing a memory service separate from the CMHTs and to secure funding to increase the number of roles in order to reduce waiting times.  
  
Please redact where necessary any information which is confidential and which reasonably ought not to be placed in the public domain.  
  
Please provide your response in electronic form."
6. The Trust responded on 21 May 2024 refusing to disclose the requested information under section 43(2) of FOIA (commercial interests).
7. The complainant requested an internal review on 21 May 2024 and the Trust responded on 7 June 2024 upholding its original decision, however the internal review response did not cite section 43(2). The internal review stated that the business case was in the process of being agreed by the ICB and that once this had happened the Trust would be able to disclose it.
8. Following correspondence from the Commissioner the Trust stated that the complainant had since received the business case in response to another FOIA request. Following correspondence with the complainant, the Commissioner ascertained that they had only received the front sheet of the Business Case.
9. After further investigation, the Trust firstly stated that section 43(2) did not apply to the requested information, then rescinded that view and made submissions to the Commissioner as to why section 43(2) of FOIA was engaged.

## Reasons for decision

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10. Section 43 of FOIA states that: "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

11. The exemption can be engaged on the basis that disclosing the information either “would” prejudice commercial interests, or the lower threshold that disclosure only “would be likely” to prejudice those interests.
12. In order for a prejudice-based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:-
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged should be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e. disclosure ‘would be likely’ to result in prejudice or disclosure or ‘would’ result in prejudice.
13. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
14. The Trust has informed the Commissioner that at this stage, the business case has not been progressed due to ongoing financial challenges in the local NHS system, and so no decision has been made on the case. Therefore, there remains a possibility that the whole memory assessment service could be put out to tender at some point, to test the market.
15. The Trust states that should this happen, it would need to enter into a competitive bidding process to attempt to secure the contract, and if its business case found its way into the public domain, there is a possibility of a competitor having a commercial advantage over it, by having knowledge of its assessment of need and the benefits it hopes to bring, its planned service delivery model, and its proposed resourcing structure and costs.

### **The Commissioner's view**

16. The Commissioner has viewed the requested information and accepts that it relates to the commercial interests of the Trust as it is a business case and therefore relates to commercial activity. However, he is not persuaded that the Trust has drawn a causal link between disclosure of the requested information and harm to any party's commercial interests.
17. The Trust is arguing that disclosing the requested information would be likely to harm its ability to bid competitively should the memory service be put out to tender, which has not happened thus far due to financial constraints. However, the Commissioner considers that this argument is speculative as the Trust has given no indication that this will happen in the immediate future. By the time any tendering exercise is run, the current business case may be obsolete.
18. The Commissioner does not consider that the Trust has demonstrated a causal link between disclosure and any prejudice which may occur to its commercial interests. Nor has it clarified a convincing level or threshold of prejudice or cited any reasons why such prejudice may occur, simply vaguely citing the fact that a competitor may possibly have a commercial advantage over the Trust. There are no reasons given or clarification as to how this may occur.
19. For the reasons given above, the Commissioner finds that section 43(2) of FOIA is not engaged and so the Trust was not entitled to apply section 43(2) to withhold the requested information.
20. As he has found that section 43(2) is not engaged, he has not gone on to consider the public interest test.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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

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