

27/07/2023

NN-ICB/23/385

Dear Requestor

RE: Freedom of Information Request

With reference to your request for information I can confirm in accordance with Section 1 (1) of the Freedom of Information Act 2000 that we can confirm that the ICB hold the information that you have requested.

In the request you asked:

I wish to make a freedom of information request on any correspondence received and subsequent response in the last three weeks in relation to the procurement bid submitted by Peacock Healthcare

Nottingham and Nottinghamshire ICB do hold the information however are unable to share this information as the information requested relates to a current procurement, it is deemed commercially sensitive under Section 43 (2) of the Act.

Section 43 of the Act states that:

- (1) Information is exempt information if it constitutes a trade secret.*
- (2) 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).*
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).*

Section 43 is a qualified exemption and is subject to a **public interest test**.

A **public interest test** was undertaken on the 19th July 2023 in response to your request made under the Freedom of Information Act 2000.

The Information Commissioner's Office (ICO) sets out public interest factors in favour of and against disclosure. Some of the factors in favour were as follows:

- *Ensuring that the public authority can be held accountable for its decisions, particularly as to how it spends public money.*
- *Ensuring that a tender process is open and transparent.*

Public interest factors against disclosure (and in favour of the maintenance of an exemption) included:

- The procurement information requested is related to a current procurement.*
- There is an inherent public interest in the maintenance of the exemption, and of upholding private companies' expectations that commercially confidential information will be protected from disclosure when they engage in public authority tenders.*
- Avoiding the discouragement of prospective tenderers from tendering for public sector contracts, for fear of disclosure of their commercially sensitive information to competitors, and that this may adversely affect both the quality of tenders for public sector contracts, and public authorities' ability to negotiate them effectively.*

On balance of the factors considered above, along with relevant case law, we considered that the ICB would be entitled to withhold the information and that this would not be superseded by public interest considerations.

If you are unhappy with the way in which your request has been handled, NHS Nottingham and Nottinghamshire Integrated Care Board (ICB) have an internal review procedure through which you can raise any concerns you might have. Further details of this procedure can be obtained by contacting Lucy Branson, Associate Director of Governance via lucy.branson@nhs.net or by writing to FOI Team at NHS Nottingham and Nottinghamshire ICB, Sir John Robinson House, Sir John Robinson Way, Arnold, Daybrook, Nottingham, NG5 6DA.

If you remain dissatisfied with the outcome of the internal review, you can apply to the Information Commissioner's Office (ICO), who will consider whether the organisation has complied with its obligations under the Act and can require the organisation to remedy any problems. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by NHS Nottingham and Nottinghamshire ICB. You can find out more about how to do this, and about the Act in general, on the Information Commissioner's Office website at: <https://ico.org.uk/for-the-public/>

Complaints to the Information Commissioner's Office should be sent to:

FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Telephone 0303 123 1113 or report a concern via <https://ico.org.uk/concerns/>

Yours sincerely

Freedom of Information (FOI) Officer on behalf of *NHS Nottingham and Nottinghamshire Integrated Care Board*

notts.foi@nhs.net

All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the [Open Government Licence \(OGL\)](#) a request to re-use is not required, but the license conditions must be met. You must not re-use any previously unreleased information without having the consent of NHS Nottingham and Nottinghamshire Integrated Care Board. Should you wish to re-use previously unreleased information then you must make your request in

writing (email will suffice) to the FOI Lead via notts.foi@nhs.net. All requests for re-use will be responded to within 20 working days of receipt.