

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

APPEAL NO: EA/2011/0276

BETWEEN:

DR ROSS HOBSON

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

APPEAL NO: EA/2011/0281

BETWEEN:

NHS NORTH OF TYNE

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to Rule 37 (1) the Tribunal procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009, **UPON** reading the parties agreed statement set out in the Schedule to this Order

BY CONSENT IT IS ORDERED:-

- 1 NHS North Tyneside Clinical Commissioning Group be substituted as Appellant in Appeal EA/2011/0281 in place of NHS North of Tyne.
- 2 The parties having agreed terms as per the attached Schedule, the Appeals EA/2011/0276 and EA/2011/0281 be withdrawn.
- 3 There be no Order as to costs.

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Dated this 30th day of April 2013

SCHEDULE

- 1 These appeals are concerned with information relating to the tender exercise conducted by NHS North of Tyne for the procurement of orthodontic services. The successful bidder was announced in 2009. Dr Hobson was an unsuccessful bidder. At the time of the request a similar exercise was due to commence in the neighbouring NHS of Tyne and Wear and the two tenders were expected to involve the same sort of services and bidders. The appeals were primarily concerned with the extent to which disclosure of the disputed information would prejudice the commercial interests of NHS South of Tyne and Wear and of the bidders in that tender exercise.
- 2 The Commissioner agreed with NHS North of Tyne that some of the disputed information should be withheld on those grounds but ordered the disclosure of other information. Dr Hobson appealed on the basis that further information ought to have been disclosed than the Commissioner ordered; NHS North of Tyne appealed on the basis that some of the information the Commissioner ordered to be disclosed would in fact be likely to reveal information that the Commissioner had elsewhere accepted was withheld correctly.
- 3 Following receipt of further submissions and evidence, the Commissioner withdrew his opposition to NHS North of Tyne's appeal. Dr Hobson's appeal remained live.

- 4 It was common ground between the parties that the key area of dispute was the effect disclosure would have upon the neighbouring NHS South of Tyne and Wear procurement. It became evident that that procurement was likely to be completed while the Tribunal appeal was under way. Once that procurement was complete, the outcome of the appeal would be of purely academic interest only. Accordingly, with the consent of the Tribunal, the parties agreed to a stay of the appeals to enable the NHS South of Tyne and Wear procurement to be completed.
- 5 Following completion of the NHS South of Tyne and Wear procurement, NHS North of Tyne made a further substantial disclosure of material previously withheld to Dr Hobson's solicitors, received by them on 6 March 2013. This further material comprised the information that was regarded as being sensitive while the NHS South of Tyne and Wear procurement was still ongoing.
- 6 Dr Hobson's advisors have now confirmed that this further disclosure satisfies his original Freedom of Information Act request.
- 7 In the circumstances, there are no longer any live issues between the parties and it is agreed that the appeal should be withdrawn.
- 8 The only further Order required is substitution of NHS North Tyneside Clinical Commissioning Group in place of NHS North of Tyne in appeal EA/2011/0281. NHS North of Tyne ceased to exist on 1 April 2013 as a result of the NHS reconfigurations and North Tyneside Clinical Commissioning Group is the successor organisation.

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