

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2012

Public Authority: North Lancashire Teaching Primary Care Trust

Address: Moor Lane Mill
Moor Lane
Lancaster
LA1 1QD

Decision (including any steps ordered)

1. The complainant requested correspondence between the Chief Executives of North Lancashire Teaching Primary Care Trust (the PCT) and the University Hospitals of Morecambe Bay NHS Trust (the Trust) concerning 'service issues' at the Trust. He also requested a report produced by the PCT for the purposes of a Board meeting relating to the same issues.
2. The Information Commissioner's decision is that the PCT was entitled to rely on section 31(1)(g) with section 31(2)(j) of the FOIA to withhold the correspondence between the Chief Executives of the PCT and the Trust and the information redacted from the Board report. He considers that the public interest in favour of maintaining the exemption outweighs the public interest in favour of disclosing the information. He also considers that the PCT was entitled to rely on section 14(2) of the FOIA to withhold the information it had previously disclosed to the requester.
3. The Information Commissioner (the Commissioner) does not require the PCT to take any steps as a result of his decision.

Background

4. The Commissioner has previously considered a complaint relating to a similar request made to the PCT by the same complainant. The Commissioner issued a decision notice in relation to the previous case under case reference number FS50350093. The First-Tier Tribunal considered the complainant's appeal under appeal reference EA/2011/0119.

Request and response

5. On 5 June 2011, the complainant wrote to the PCT and requested the following information:

"This is a formal FoI request for an electronic copy (no paper letter requested or required in connection with this request) of the letters dated on or around 5.5.10 and 3.6.10 from Janet Soo-Chung to Tony Halsall Chief Executive of UHMB NHS Trust relating to the meeting between Ms Soo-Chung and Mr Halsall which reportedly took place on 1.6.10. This meeting was arranged to discuss 'service issues at UHMB', and this was the reported topic of the requested letters. A redacted version of the response to this letter, from Mr Halsall to Ms Soo-Chung dated 14.6.10, has been disclosed at the suggestion of the Information Commissioner. I request an electronic copy of the non-redacted version.

I also request a copy of the report on these same 'service issues at UHMB' which was prepared for 'part 2 of the NLTPCT Trust Board meeting', probably the meeting of 26.5.10, but possibly that of 28.7.10."

6. The PCT responded on 1 July 2011 confirming that it held three letters dated 5 May 2010, 3 June 2010 and 14 June 2010 which were within the scope of the request. It also confirmed that it held a report produced by the PCT for the purposes of a Board meeting held on 26 May 2010. It refused to disclose the information it had previously provided to the complainant under section 14(2) of the FOIA. The PCT disclosed a redacted version of the Board report. It refused the information redacted from the Board report and the correspondence between the Chief Executives of the PCT and the Trust under section 31(1)(g) with section 31(2)(j) of the FOIA.
7. Following an internal review the PCT wrote to the complainant on 1 August 2011. It upheld its reliance on section 31(1)(g) with section 31(2)(j) of the FOIA. The internal review decision did not address the PCT's reliance on section 14(2) of the FOIA. However, in response to the Commissioner's enquiries the PCT confirmed that it continued to rely on section 14(2) of the FOIA in relation to the information it had previously disclosed to the complainant.
8. In the course of his investigation the Commissioner informed the PCT that he did not consider that section 31(1)(g) with section 31(2)(j) of the FOIA was engaged in relation to some of the information the PCT had redacted from the Board report. The PCT withdrew its reliance on the exemption in relation to the information identified by the Commissioner. As this information has now been disclosed to the complainant it is not addressed any further within this decision notice.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant considers that, although his request of 5 June 2011 is wider in scope, the issues raised by his complaint are similar to those considered in relation to his previous complaint handled under case reference number FS50350093. The complainant does not dispute that section 31(1)(g) with section 31(2)(j) of the FOIA is engaged in relation to the information the PCT has withheld in this case but considers that the public interest in disclosing the information outweighs the public interest in maintaining the exemption. In support of this he places particular emphasis on the age of the information at the time of his request and his view that the PCT are attempting to cover up its own actions in connection with the Trust.
10. The scope of the Commissioner's investigation is to determine whether:
 - The Trust is entitled to rely on section 31(1)(g) with section 31(2)(j) of the FOIA to refuse to disclose the information contained within the correspondence sent by the PCT to the Trust dated 5 May 2010 and 3 June 2010 and the redacted parts of the Trust's letter to the PCT dated 14 June 2010.
 - The information redacted from the PCT's report to its Board meeting of 26 May 2010 is exempt under 31(1)(g) with section 31(2)(j) of the FOIA.
 - The information in the letter dated 14 June 2010, which was disclosed to the complainant in response to his previous request, is exempt under section 14(2) of the FOIA.
11. The Commissioner is aware that the Trust achieved Foundation status on 1 October 2010. As the requested information relates to the period before the Trust achieved Foundation status it is referred to in this decision notice under its previous name.
12. In the course of his investigation the Commissioner has considered all of the arguments made by the complainant and the PCT including those not specifically referenced within this decision notice.

Reasons for decision

Section 31(1)(g) with Section 31(2)(j) of the FOIA

13. Section 31(1)(g) of the FOIA states that:

'(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)'.

14. Section 31(2)(j) of the FOIA states that:

'(2) The purposes referred to in subsection (1)(g) to (i) are—

(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work'.

15. The Commissioner will therefore consider whether the PCT exercises a relevant function for the purposes specified in section 31(2)(j) of the FOIA, the likelihood of prejudice to that function if the requested information were to be disclosed and whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The PCT's function for the purposes of Section 31(2)(j) of the FOIA

16. The PCT has explained that it is responsible for designing and commissioning (arranging and paying for) primary and community healthcare services to meet the needs of the local population. In order to do so it commissions services from a wide range of NHS and other bodies including the private sector. The Trust is one of the bodies contracted to provide services for the PCT. The primary functions of the PCT include duties to oversee the safe and effective delivery of services and care and to put and keep in place arrangements to monitor and improve the quality of healthcare provided by and for the PCT. The PCT's website states the following:

"NHS North Lancashire monitors and performance manages all those organisations that provide NHS services in north Lancashire. Performance measures and indicators are included in the contracts, with incentives and sanctions to promote compliance. Serious breaches, or lapses in quality, would be identified and dealt with

immediately through this process, ensuring the quality and safety of the services."

17. For the exemption to be engaged, the Commissioner requires the function identified by a public authority in relation to section 31(1)(g) of the FOIA to be a function which is specifically entrusted to the relevant public authority to fulfil. The Commissioner is aware that healthcare authorities have specific statutory duties to protect the health and safety of patients against risks posed by the delivery of healthcare services. Section 45(1) of the Health and Social Care (Community Health and Standards) Act 2003 places a duty on all NHS bodies to:

"put and keep in place arrangements for the purposes of monitoring and improving the quality of health care provided by and for that body."

18. The Commissioner considers that this function places a duty on the PCT to protect the health and safety of patients against risks arising out of or in connection with the actions of the bodies it commissions to deliver healthcare services. Therefore, he is satisfied that the PCT performs a relevant function in relation to section 31(1)(g) of the FOIA and that the PCT exercises this function for the purposes of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work as outlined under section 31(2)(j) of the FOIA.

Likelihood of prejudice occurring

19. The PCT has argued that the disclosure of the requested information would be likely to prejudice its functions in relation to the protection of the health and safety of patients against risks arising out of or in connection with the actions of the bodies it commissions to deliver healthcare services.
20. The Commissioner considers that the expression 'likely to prejudice' means that the chance of prejudice to the interests the exemption is designed to protect should be more than a hypothetical possibility – there must be a real and significant risk of the prejudice occurring.¹
21. The complainant does not dispute that the exemption under section 31(1)(g) and 31(2)(j) of the FOIA is engaged and has instead focused his arguments on the public interest in the disclosure of the requested information.

¹ *John Connor Press Associates Limited v ICO* [EA/2005/0005], para 15.

22. The Commissioner will go on to consider the likelihood of prejudice to the PCT's relevant functions, firstly in relation to the disclosure of the information contained within the correspondence between the Chief Executives of the PCT and the Trust, and secondly in relation to the information redacted from the PCT's Board report.

Correspondence between the Chief Executives of the PCT and the Trust

23. The PCT has argued the following in relation to the prejudice that would be likely to occur if the requested information were to be disclosed:

"If communications between Chief Executives regarding an NHS Trust's provision of services under contractual arrangements were routinely disclosed to the public, this would be likely to prevent individuals from becoming engaged in free and frank exchanges of correspondence with regard to the monitoring of and provision of healthcare services provided by Trusts under contractual arrangements with commissioning bodies...and as such, would hinder collaborative working and the speedy resolution of issues arising. Such exchanges are vital for the effective working and role of the PCT as a commissioner of health services."

24. The PCT has also argued that there is a risk of prejudice as it may lead to the information being taken out of context and result in unsubstantiated public concerns about the Trust. Whilst the PCT accepts that generally contextual information can be published which can reduce these risks it argues that the publication of contextual information and the formulation of public relations strategies can be a time-consuming distraction when the PCT's principal focus should be on the resolution of the issues at hand. Given the ongoing nature of the issues discussed in the correspondence the PCT has also argued that the PCT can not have a settled position and therefore the publication of contextual material in this particular case may be "premature, impossible or even misleading."
25. In the complainant's previous related case the Commissioner determined that disclosure of the requested information was likely to impact upon the voluntary supply of information and that this would be likely to prejudice the PCT's function as a commissioner of healthcare services. The First-Tier Tribunal agreed with the Commissioner's assessment by a majority as it considered that there was a:

“real risk of prejudice to the Second Respondent's [the PCT] exercise of its functions of monitoring and improving health care services provided to it by the Trust.”²

The Tribunal decision is only applicable to the information in the letter of 3 June 2010. However, the additional correspondence dated 5 May 2010 and the information redacted from the letter dated 14 June 2010, which are included within the scope of this case, relate to the same or similar matters.

26. The Commissioner has considered whether, at the time of this request, disclosure of the information within the correspondence would be likely to have a negative impact on the voluntary supply or free flow of information and, if so, whether the negative impact on the voluntary supply or free flow of information would be likely prejudice the PCT's functions of monitoring and improving healthcare services in its area.
27. The PCT has argued that if the correspondence were to be disclosed this would be likely to prevent individuals from engaging in free and frank exchanges of correspondence with regard to the monitoring and provision of healthcare services. It has stated that future communications would be likely to be slower, more formal and less candid both in relation to these ongoing issues and issues arising in the future. The PCT has also explained that the Chief Executive of the Trust did not expect that the requested information would be disclosed and that disclosing the correspondence would place unsubstantiated claims into the public domain.
28. The Commissioner is not aware of any statutory power that the PCT has to compel Trusts to engage with it concerning the provision of healthcare services. However, the Commissioner notes that the PCT's main function is as a commissioner of health services in the area and that it commissions services from a wide range of NHS bodies as well as the private sector to obtain the best services for the population it serves at the best value. It is therefore in the Trust's interests to engage with the PCT to ensure that its healthcare services are meeting the PCT's requirements. If the Trust could not provide the level of service required by the PCT the PCT may look to another NHS body or to the private sector to provide these services. The Trust's interests in providing information to the PCT are compounded by the fact that the PCT has

² EA/2011/0119, <http://www.informationtribunal.gov.uk/DBFiles/Decision/i640/20111230%20Decision%20EA20110119.pdf>, para 10.

powers to withhold funding from the bodies it commissions if the services they provide do not meet the required standards.

29. Having reviewed the content of the correspondence the Commissioner considers that the letters are informal in nature and contain candid exchanges between the Chief Executive of the PCT and the Trust in relation to the Trust's performance. He agrees with the PCT's assertion that the information relates to the early stages of discussions between the PCT and the Trust and that disclosure of the information would place unsubstantiated claims into the public domain.
30. The Commissioner considers that the frank and open nature of the exchanges, the fact they relate to an early stage in discussions and would disclose information about unsubstantiated issues into the public domain, and the expectation of the Chief Executive of the Trust that the information would not be disclosed, are all factors supporting the PCT's argument that the disclosure of the requested information would be damaging to the voluntary supply and free flow of information. Although it is in the Trust's interests to provide the PCT with information on its provision of healthcare services it is the manner in which the information is provided and the open relationship between the parties that is important to the PCT's commissioning functions and its ability to resolve issues relating to the health and safety of patients as promptly as possible.
31. The Commissioner has concluded that disclosure of the requested information would be likely to have a negative impact upon the voluntary supply and free flow of candid information between the PCT and the Trust in relation to the ongoing matters discussed in the correspondence. He also considers that there would be a precedent effect leading to a real risk that the Trust would provide the PCT with less timely, less candid and more defensive responses to matters the PCT raises in the future. The Commissioner will now go on to consider whether the negative impact of the voluntary supply and free flow of information would prejudice the PCT's function as a commissioner of healthcare services.
32. The PCT has argued that the negative impact on the free and frank exchange of views and the provision of information would be likely to prejudice the PCT's monitoring of and provision of healthcare services provided by Trusts under contractual arrangements. It has stated that in turn this would impact upon its ability to protect the health and safety of patients against risks arising out of, or in connection with, the actions of the bodies it commissions to deliver healthcare services. The PCT considers that this is vital to its role as a commissioning body and describes the likely effect as follows:

"if these types of discussions and informal correspondence were to cease or be restricted in any way, this would be likely in my view to seriously affect the delivery of care to patients in the PCT's region."

33. The Commissioner notes that the correspondence between the PCT and the Trust relates to a period between May and June 2010. The complainant's request was made in June 2011. The PCT has informed the Commissioner that the issues discussed in the correspondence were ongoing at the time of the request. It stated:

"A major incident in relation to quality and safety issues at University Hospitals of Morecambe Bay NHS Foundation Trust (UHMBFT) was formally declared in October 2011 at the request of NHS North West following interventions from both the Care Quality Commission and Monitor. The Care Quality Commission is now investigating UHMBFT using its Section 48 powers."

34. It is clear that the major incident had not been declared at the time of the request. However, the Commissioner considers that the declaration of a major incident in October 2011 indicates that the issues discussed in the correspondence between the PCT and the Trust were ongoing in the intervening period between the time of the correspondence in May/June 2010 and the declaration of the major incident in October 2011. Therefore, he considers that these issues were ongoing at the time of the request and the negative impact on the voluntary supply and free flow of information would be likely to prejudice to the PCT's ability to resolve these issues with the Trust.
35. The Commissioner also recognises the PCT's argument that if this information were to be disclosed it is likely there would be a precedent effect on the voluntary supply and free flow of information between the PCT and the Trust in the future. In turn this would affect the PCT's ability to perform its functions as a commissioner of healthcare services and protect the health and safety of patients in relation to any issues that arise.
36. The Commissioner does not accept the PCT's argument that disclosure of the requested information would be likely to prejudice its functions of monitoring and improving healthcare services in its area as a result of the information being taken out of context and resulting in unsubstantiated public concerns about the Trust. He considers that the publication of contextual information would be possible. Whilst he accepts that as the issues are ongoing the PCT could not fully explain the nature of the issues, he considers that it could explain the nature of the requested information by highlighting the fact that it represents the initial stages of discussion between the PCT and the Trust and the issues raised have not been substantiated. The Commissioner does not agree

that the time it would take the PCT to formulate public relations strategies or create contextual information is a relevant consideration.

37. The Commissioner considers that there is a real and significant risk that the negative impact the disclosure of the correspondence would have on the voluntary supply and free flow of candid information would be likely to prejudice the PCT's ability to protect persons other than persons at work against risk to health and safety arising out of or in connection with the actions of persons at work. He considers that this is the case in relation to the particular issues raised in the correspondence and in relation to any issues that arise in the future due to the precedent effect of the disclosure of the requested information. Therefore, he considers that section 31(1)(g) with section 31(2)(j) of the FOIA is engaged in relation to the correspondence between the PCT and the Trust.

PCT's Report to its Board meeting

38. The content of the PCT's report to its Board meeting of 26 May 2010 relates to its functions as a commissioning body to monitor the delivery of healthcare by the Trust. It raises unsubstantiated issues about the Trust's performance, outlines how the PCT monitors quality and safety and invites the PCT's Board to consider a range of actions to address the issues outlined within the report.
39. The PCT considers that the same reasoning for section 31(1)(g) with section 31(2)(j) of the FOIA applying to the correspondence also applies to the redacted information within the Board report. The complainant has not challenged the fact that the exemption is engaged in relation to the Board report.
40. The Commissioner has considered whether the disclosure of the redacted information in the Board report would have a detrimental effect on the voluntary supply and free flow of information and whether this would be likely to prejudice the PCT's functions of monitoring and improving healthcare services in its area.
41. The Commissioner considers that the disclosure of the redacted information in the Board report, which relates to similar issues to those discussed within the correspondence, would be likely to have a similar effect on the voluntary supply and free flow of information between the PCT and the Trust. He considers that the Trust would not expect the PCT to disclose information about unsubstantiated issues into the public domain especially as the information relates to the initial stages of the PCT's consideration of these issues before the Trust had an opportunity to respond. He also considers that the disclosure of this information would be likely to have a similar effect on the relationship between the PCT and the Trust and that if the information were to be disclosed the

Trust would be less likely to engage in candid discussions concerning these issues and issues arising in the future.

42. For the same reasons as those outlined above in relation to the correspondence between the PCT and the Trust, the Commissioner considers that the detrimental effect on the voluntary supply and free flow of information between the PCT and the Trust would be likely to prejudice the PCT's functions of monitoring and improving healthcare services in its area.
43. Therefore, he considers that section 31(1)(g) with section 31(2)(j) of the FOIA is engaged in relation to the information redacted from the PCT's Board report.

Public Interest Test

44. The exemption under section 31(1)(g) with section 31(2)(j) of the FOIA is qualified which means that the information in question should only be withheld where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The PCT and the complainant have provided the same public interest arguments in relation to the correspondence between the Chief Executives of the PCT and the Trust and the PCT's report to its Board meeting of 26 May 2010. The Commissioner considers that the same public interest factors are relevant to all of the information withheld under this exemption and he will therefore address the balance of the public interest in relation to the information in the correspondence and the Board report jointly.

Public interest arguments in favour of disclosing the requested information

45. The PCT considers that the following factors weigh in favour of the requested information being disclosed:
 - Promoting transparency, accountability and public participation.
 - Disclosure might enhance the quality of discussions and decision making generally.
46. The complainant has argued that the length of time that has passed between the time at which the Board report was produced and the correspondence was exchanged between the PCT and the Trust, and the time of his request, supports his assertion that it is now in the public interest for the information to be disclosed. The Commissioner considers that if the issues to which the requested information relates had been resolved at the time of the request the length of time that had passed would have been a strong public interest factor in favour of disclosure because the likelihood and severity of any prejudice caused by the

disclosure to the PCT's ability to resolve these issues would have been significantly reduced. However, as outlined above, the PCT has explained that these issues are ongoing. Whilst the issues are ongoing the Commissioner considers that they will have moved on somewhat from the initial issues raised in the correspondence and the Board report. Therefore, notwithstanding the precedent effect of the disclosure described below, the Commissioner has afforded some weight to the length of time that had passed between the information being produced and the time of the request.

47. The complainant has also argued that the PCT is attempting to cover up its own actions in connection with the Trust. The Commissioner does not consider that it is within his remit to evaluate the performance of the PCT. The Tribunal has supported the Commissioner's position in relation to similar arguments made by the complainant in his appeal submissions in relation to his previous complaint.³ Had there been any independent evidence to suggest that the PCT was attempting to cover up its own actions in relation to the Trust this could have been taken into account as a relevant public interest factor. However, the complainant has not provided any evidence to support his assertions and consequently the Commissioner has afforded no weight to this factor.
48. The Commissioner considers that disclosure would promote openness, transparency and accountability in relation to the matters discussed between the PCT and the Trust concerning the health and safety of patients. He also considers that it would shed light on nature of the relationship between the PCT and the Trust and how the PCT performs its functions of monitoring and improving the quality of healthcare provided by and for the PCT. The Commissioner considers that these are factors in favour of disclosure and has afforded weight to them.
49. The Commissioner also considers that disclosure of the information would provide the public with greater knowledge of matters discussed between the PCT and the Trust. This would allow the public to participate more constructively in informed debate in relation to the Trust's performance. The Commissioner considers that this is in the public interest and has afforded weight to this factor.
50. The PCT considers that the requested information does not raise issues relating to the expenditure of public money. In contrast, the

³ EA/2011/0119,
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i640/20111230%20Decision%20EA20110119.pdf>, para 17.

Commissioner considers that there is a public interest in demonstrating that the services commissioned by the PCT meet the necessary quality standards and provide value for money. This is especially the case as the PCT has powers to withhold funding from the bodies it commissions if the services they provide do not meet the required standards. The Commissioner has afforded weight to this factor.

Public interest arguments in favour of maintaining the exemption

51. The PCT considers that the following factors weigh in favour of maintaining the exemption:

- The content of the requested information does not raise significant issues of concern, such as significant health and safety concerns, which would justify the public knowing about the issues being raised.
- The information requested does not raise issues relating to the expenditure of public money.
- The information is recent and matters are ongoing.
- The information arises as part of the continuing commissioning and monitoring role of the PCT for which the need to ensure the free and frank exchange of views continues.
- The nature of the information is such that its effect on the delivery of healthcare may be unclear – the information relates to obligations and targets imposed by the commissioning body with regard to the provision of healthcare services - information might be taken out of context and might result in unsubstantiated public concerns.
- There is a need for a “safe space” for public bodies to formulate and debate issues away from public scrutiny.
- Disclosure is likely to hamper the quality of future discussions, the free and frank exchange of views with regard to issues and decision making generally.
- There would be a likelihood of harm as a result of putting unnecessary concerns into the public domain. The reputation of the PCT and the Trust may be affected.

52. The Commissioner has given particular weight in this case to the ‘precedent value’ and chilling effect that the disclosure of the requested information is likely to have on future communications between the PCT and the Trust. He considers that it is likely that there would be a

negative effect on the voluntary supply and free flow of information and consequently a significant risk of considerable prejudice to the PCT's functions of monitoring and improving health care services provided to it by the Trust. The Commissioner notes that the Tribunal attached "significant weight" to the concept of precedent effect in the previous related case.⁴

53. As the issues to which the information relates are ongoing, the Commissioner considers that this increases the likelihood of a negative effect on the voluntary supply and free flow of information. Therefore, he considers that the likelihood of prejudice to the PCT's functions is also increased. He has afforded weight to this factor but considers that the weight afforded to it has reduced given the length of time since the particular issues to which the requested information relates were raised with the Trust. As the issues will have moved on in the intervening period he considers that, at the time of the request, the likelihood and severity of prejudice to the PCT's functions of releasing this particular information had reduced. However, he considers that there is still a need for the PCT to be able to address these issues with the Trust candidly and expediently without external scrutiny. He also notes the PCT's argument that disclosing the requested information would place unsubstantiated claims into the public domain. The Commissioner has afforded weight to these factors.
54. The Commissioner considers that the existence of mechanisms and statutory safeguards to scrutinise the performance of the PCT and the Trust is a relevant public interest factor in favour of maintaining the exemption. Had such mechanisms not existed he considers that this would have been a significant public interest factor in favour of disclosure. The Commissioner notes that a major incident has been declared at the Trust following interventions from both the Care Quality Commission and Monitor and that there is an ongoing Care Quality Commission investigation. He affords weight to this factor and notes that the Tribunal attached "significant weight" to this factor in the previous related case.⁵

⁴ EA/2011/0119,
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i640/20111230%20Decision%20EA20110119.pdf>, para 23.

⁵ EA/2011/0119,
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i640/20111230%20Decision%20EA20110119.pdf>, para 24.

55. As outlined above, the Commissioner does not agree with the PCT's argument that disclosure of the information would lead to prejudice to its functions as a result of the information being taken out of context and resulting in unsubstantiated public concerns about the Trust. Therefore, he has not afforded weight to this factor.
56. The Commissioner disagrees with the PCT's assertion that the information does not raise issues relating to the expenditure of public money for the reasons outlined in paragraph 50.
57. In relation to the Board report the Commissioner has afforded weight to the 'safe space' argument raised by the PCT. The report invites the PCT's Board to consider a range of additional actions it could take in relation to the unsubstantiated issues discussed within the report concerning the Trust's performance. The Commissioner considers that the PCT should be afforded the 'safe space' to raise possible approaches to performing its commissioning functions in order to protect the health and safety of patients without being hindered by external comment.

Balance of the public interest arguments

58. The Commissioner has considered the public interest arguments in favour of disclosure made by the PCT and the complainant. He has afforded some weight to the length of time that has passed since the information was produced. He has also given due weight to the argument that disclosure would promote openness, transparency and accountability in relation to the matters to which the information relates, the relationship between the PCT and the Trust and the PCT's performance of its functions. The Commissioner has also given weight to the value in allowing the public to participate more fully in informed debate and demonstrating whether the PCT is getting value for money from the Trust for the services it delivers.
59. The Commissioner has taken into account the public interest arguments in favour of maintaining the exemption made by the PCT. He has afforded particular weight to the precedent effect that the disclosure of the requested information is likely to have on communications between the PCT and the Trust in the future. He has also afforded weight to the fact that the issues to which the information relates were ongoing at the time of the request and that disclosing the information would place unsubstantiated claims into the public domain. In addition to this he has afforded weight to the fact that there are mechanisms in place to scrutinise the performance of Trusts and that the PCT should be afforded 'safe space' to raise possible approaches to the performance of its functions without being hindered by external comment.

60. For the reasons outlined above, on the particular facts of this case the Commissioner considers that the public interest arguments in favour of maintaining the exemption outweigh the public interest arguments in favour of disclosure. Therefore, the PCT is not required to disclose any of the information it withheld under section 31(1)(g) with section 31(2)(j) of the FOIA.

Section 14(2) of the FOIA

61. Section 14(2) of the FOIA states that:

“(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

62. The PCT has argued that the information it provided to the complainant in response to his previous request, namely the unredacted information contained in the letter of 14 June 2010, is exempt under section 14(2) of the FOIA.

63. The Commissioner considers that a request for information is repeated if:

- it is made by the same person as a previous request;
- it is identical or substantially similar to the previous request; and
- no reasonable interval has elapsed since the previous request.

64. The complainant's request of 5 June 2011 includes within its scope the same information he received in response to his previous request. The Commissioner notes that due to its nature the information has not changed in the interim period. He does not consider that a reasonable interval has passed and therefore the PCT is not required to disclose any of the information it withheld under section 14(2) of the FOIA.

Right of appeal

65. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

66. 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.
67. 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

Rachael Cragg
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