

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 22 November 2022

Public Authority: Liverpool University Hospital NHS Foundation Trust

Address: Prescott Street
Liverpool
Merseyside
L7 8XP

Decision (including any steps ordered)

1. The complainant has requested papers considered at three meetings of the New Hospital Committee. The above public authority ("the public authority") disclosed some information but eventually relied on regulations 12(5)(b) – course of justice - 12(5)(e) – commercial confidentiality – and 13 of the EIR – personal data – in order to withhold the remaining information.
2. The Commissioner's decision is that the public authority has correctly relied on all three exceptions to withhold information. As the public authority failed to deal with the request, under EIR, within 20 working days, it breached regulation 14 of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 13 May 2022, the complainant wrote to the public authority and requested copies of all documents considered during three specific meetings of the New Hospital Committee.
5. The public authority responded on 14 June 2022. It provided redacted copies of each document pack. It relied on sections 42, 43 and 40(2) of FOIA to make the redactions.

6. Following an internal review the public authority wrote to the complainant on 30 June 2022. It had now considered the request under the EIR and relied on regulations 12(5)(b), 12(5)(e) and 13 of the EIR to withhold the redacted information.

Reasons for decision

7. As with previous decision notices issued on this matter (see below) the Commissioner considers that the information in question is environmental.
8. The Commissioner has only been provided with redacted versions of most of the information falling within scope. However, whilst the information itself may have been redacted, it is clear from the context within each document what the nature of that information is – with one exception.
9. One table has been redacted from the document and it is not clear, because it has been redacted in its entirety, what that information is. The public authority provided an unredacted version of this document – which is a table setting out the various responsibilities and legal liabilities the public authority has in relation to its building project.
10. Whilst much of the information is factual, the Commissioner still considers it to engage legal advice privilege. This is because it is not the facts themselves, but the selection and curation of the facts which attracts the privilege. In particular, the Commissioner notes that the table separates out the different liabilities at different stages of the project and indicates which responsibilities fall on the public authority and which on the contractor.
11. In respect of the remaining information, the public authority has redacted updates and potential options relating to ongoing and future litigation. It has also withheld some sensitive budgeting or financial information relating to the new build project. Finally it has withheld the names of junior employees.
12. To the extent that the information relates to ongoing and prospective litigation, the Commissioner is satisfied that the information engages regulation 12(5)(b) and that the public interest favours maintaining that

exception. He set out his reasoning in detail in decision notice IC-123838-W7L2 and relies on the same reasoning here.¹

13. To the extent that the information relates to budget and financial information for an ongoing project, the Commissioner is satisfied that the information engages regulation 12(5)(e) and that the public interest favours maintaining that exception. He set out his reasoning in detail in decision notice IC-141289-V5N9 (paras 20-29) and relies on the same reasoning here.²
14. With the exception of one document (which contains a considerable amount of privileged information), the public authority has provided the vast majority of each document to the complainant. It has only withheld a relatively small amount of information which is that which is most sensitive. The fact that so much information has been disclosed diminishes the public interest in further disclosure.
15. The Commissioner is aware from correspondence that the complainant is of the view that "public interest trumps everything." That is a view which finds no support in the wording of the EIR nor its associated caselaw. Exceptions exist for a reason and both the public authority and the Commissioner are required to carefully weigh any public interest in disclosure with the public interest in preventing the specific adverse effect that each exception is designed to avoid.
16. The public authority is entitled to rely on regulation 13 of the EIR to withhold the names of junior members of staff. The Commissioner can identify no legitimate interest in disclosing this information.

Procedural matters

17. As the public authority failed to cite a valid EIR exception to withhold information, within 20 working days of receiving the request, it breached regulation 14 of the EIR.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022594/ic-123838-w7l2.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022330/ic-141289-v5n9.pdf>

Right of appeal

18. 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

19. 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.
20. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF