

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

### **Decision notice**

**Date:** 24 November 2022

**Public Authority:** NHS Bedfordshire, Luton and Milton Keynes  
Integrated Care Board

**Address:** 3<sup>rd</sup> Floor, Arndale House  
The Mall  
Luton  
LU1 2LJ

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

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1. The complainant has requested numerical ratings for Bedfordshire Hospitals NHS Foundation Trust and Milton Keynes University Hospital NHS Foundation Trust at the stage it is held by NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board (the ICB) Board. The ICB refused to provide the requested information as it said it was still in discussions with NHS England before taking the core standards to the ICB Board.
2. The Commissioner considers that as at the time of the request, as the required information had not been taken to the ICB Board it wasn't yet at the stage of being held by the ICB Board. Whilst it would therefore appear that numerical ratings are held by the ICB and under discussion with NHS England, they have not yet been provided to the ICB Board. On this basis the information the complainant requires was not held by the ICB at the time of the request under section 1(1)(a) FOIA.
3. The Commissioner requires no steps to be taken.

### **Request and response**

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4. On 15 September 2022 the complainant requested information in the following terms:

"Under the provisions of the Freedom of Information Act 2000, I am writing to request the numerical ratings of the following NHS acute Trusts against the NHS England Core Standards for Emergency

Preparedness, Resilience and Response (EPRR) for 2021-22, excluding those standards that are part of the "Deep Dive".

Please note that for each Trust I am requesting numerical records of the total number of Core Standards applicable, the number of Standards with which the Trust is fully compliant, the number of Standards with which the Trust is partially compliant and the number of Standards with which the Trust is non compliant.

This information should be readily available to the Board though the EPRR annual assurance process. I am requesting this information from the Board rather than the Trusts themselves because I would like the information held by the Board as part of the EPRR process.

I am requesting these numerical ratings for these Trusts: Bedfordshire Hospitals NHS Foundation Trust Milton Keynes University Hospital NHS Foundation Trust".

5. The ICB responded on 10 October 2022, it said that the core standards have not been reported to the ICB Board as yet, so it was unable to provide this information currently. It confirmed that the Board Meeting Minutes and supporting documents will be published on the ICB's webpages in due course.

6. On the same date the complainant requested an internal review:

"I am writing to request an internal review of NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board's handling of my FOI request 'Core Standards for EPRR ratings for Beds, Luton & Milton Keynes Acute Trusts'. I requested the numerical ratings of NHS acute Trusts against the NHS England Core Standards for Emergency Preparedness, Resilience and Response (EPRR) for 2021-22, excluding those standards that are part of the "Deep Dive". The Board has stated that the core standards have not been reported to the Board as yet, so it is unable to provide this information currently. This cannot be the case because the core standards for Bedfordshire Hospitals NHS Foundation Trust have been reported to NHS England.

I am requesting this information from the Board rather than NHS England because I would like the information at the stage it is held by Board as part of the EPRR annual assurance process."

7. On the same date the ICB responded:

"The ICB is still in discussions with NHS England before taking the core standards to the ICB Board. Once this has been completed the outcome will be released on the ICB's website."

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether the ICB holds the information requested under section 1(1)(a) FOIA.

## Reasons for decision

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### Section 1

10. Section 1(1) FOIA provides that:

"Any person making a request for information to a public authority is entitled –

  - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him."
11. When determining whether or not information is held the Commissioner applies the normal civil standard of proof, on the balance of probabilities following *Linda Bromley v the Information Commissioner and the Environment Agency EA/2006/0072*.
12. In this case the ICB has confirmed that it is still in discussions with NHS England before taking the core standards to the ICB Board. Once this has been completed the outcome will be released on the ICB's website.
13. The complainant has confirmed that, "I would like the information at the stage it is held by Board as part of the EPRR annual assurance process." This is why the complainant has not asked NHS England for the information.
14. It would therefore appear that the complainant requires the information which is submitted to the ICB Board.
15. Given the ICB has confirmed that it was still in discussions with NHS England before taking the core standards to the ICB Board, the Commissioner considers that on the balance of probabilities the ICB did not hold the requested information at the time the request was made as it had not yet been taken to the ICB Board.

## **Right of appeal**

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16. 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)

17. 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.
18. 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.....**

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