

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

### **Decision notice**

**Date:** 7 February 2024

**Public Authority:** NHS South East London Integrated Care Board

**Address:** 160 Tooley Street  
London  
SE1 2TZ

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

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1. The complainant has requested from NHS South East London Integrated Care Board (the ICB) information relating to fees charged to patients for services by GP practices and the number and identity of GP practices it is in contract with.
2. The ICB denied holding account information about fees charged to patients for services by GP practices. During the course of the Commissioner's investigation the ICB however confirmed that it holds information about the number and identity of the GP practices it is in contract with.
3. The Commissioner's decision is that, on the balance of probabilities, the ICB does not hold information relating to fees charged to patients for services by GP practices. However, by failing to confirm and disclose to the complainant the number and identity of the GP practices it is contact with, the ICB has breached section 1(1) of the FOIA.
4. The Commissioner requires the ICB to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with the number and identity of the GP practices it is contract with.

5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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6. On 10 July 2023, the complainant wrote to the ICB and requested information in the following terms:

“Do you have accounts for each GP practice, that list the type of service provided to patients, + the frequency/number (how many times this service was provided), + the amount of fees charged to patients?

Can you provide this information, including a table of the charges that GP Practices have claimed back from yourselves, for the last 2 financial years? I am particularly interested in fees charged for (medical) records or (medical) reports.

If this is not easily available, can you then please advise under section 16 how many GP Practices you are contracting to, + list these, + can you please advise which information would be difficult to retrieve?.”

7. On 3 August 2023, The ICB responded to the request. It denied holding any of the requested information.
8. On 4 August 2023, the complainant wrote to the ICB and asked it to carry out a review of the request.
9. On 23 August 2023, the ICB carried out a review and wrote to the complainant maintaining its original decision.

## **Scope of the case**

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10. On 26 August 2024, the complainant contacted the Commissioner to complain about the way their request for information had been handled. Specifically that they believe the ICB does hold information within the scope of the request and that it was unhelpful in clarifying / interpreting the scope of the request.

11. The Commissioner has considered whether the ICB has identified and communicated to the complainant, all the information it holds within the scope of the request.

### **Reasons for decision**

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12. Under section 1(1) of FOIA a public authority must (a) confirm whether they hold the recorded information an applicant has requested and (b) communicate the information to the applicant if it is held and unless an exemption applies.
13. The Commissioner has sought to determine whether, on the balance of probabilities, the ICB holds any relevant information which falls within the scope of the request. Applying the civil test of 'the balance of probabilities' is in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held.
14. In deciding where the balance of probabilities lies, the Commissioner will consider explanations offered by the public authority and complainant, together with searches carried out by the ICB and any other information offered, which is relevant to his determination.

### **The complainant's position**

15. The complainant said that the ICB is the commissioning body for the GP practices, and therefore he believes it must hold 'some kind of accounts' for the practices, which, would contain the information he has requested. He said that it does 'not make sense' that it would not record the information.
16. In regard to section 16, the complainant said that he believes the ICB has been unhelpful in terms of 'clarifying the scope of the request, interpreting the request and unhelpful generally'.

### **The ICB's position**

17. In regard to accounts containing information about chargeable services provided to patients for each GP practice and the fees for those services. The ICB explained to the Commissioner that based on the wording of the request, the complainant appears to be seeking information about 'chargeable' services to the patient.
18. The ICB explained that, it is the commissioner of primary care services from GPs, who operate as individual businesses. The ICB is in contract with GP practices to provide 'Essential and Additional' services in line with the national General Medical Services, Primary Medical Services and Alternative Provider Medical Services contracts. The contract relates to

providing non-chargeable services to patients. The information it holds relates to payments it makes to practices for their contracted service provision (for non-chargeable services to patients).

19. The ICB explained that, although GPs may as individual practitioners undertake work that they charge patients for, e.g., carry out medical assessment on individuals which result in medical reports being produced, this work is not however a part of the contractual arrangements between the ICB and the practices. It would therefore not hold recorded information within the scope of the request.
20. The ICB contacted its borough teams who have regular contact with GP practices and manage the local relationships. The searches conducted identified no information was held. The teams only held the standard contracts with the GP practices that are in place. They also advised that there is no business purpose for it to hold information relating to GPs / the practices operation as independent businesses, e.g., information relating to additional chargeable services provided by GPs to patients.
21. In regard to the number and identity of GP practices the ICB is in contract with, the ICB confirmed to the Commissioner that it holds this information. It acknowledged that it failed to confirm that the information was held in its initial response and review and said that it would now contact the complainant and provide him with the information.

### **The Commissioner's view**

22. The Commissioner notes that in their request for information, the complainant is specifically seeking information about chargeable services provided to patients for each GP practice. The complainant appears to have made an assumption that any chargeable service provided by GPs is a part of the ICB's contract with GP practices and also that the requested information would be held by the ICB in accounts it has for each GP practice.
23. The Commissioner also notes that the ICB is only in contract with the GP practices to provide non-chargeable services to patients. That although GPs may (as individuals practitioners) undertake additional work that patients may be charged for, this work is ultimately outside of the ICB's standard contract with GP practices.
24. The Commissioner also notes the enquiries made by the ICB with its borough teams, their relationship with GP practices and the likelihood of whether they would hold the requested information.
25. For the reasons given above, and taking into account that the complainant has offered no evidence to the contrary, it is the

Commissioner's view that on the balance of probabilities, the ICB does not hold accounts / information relating to fees charged to patients for services by GP practices.

26. However, by failing to confirm that it holds information relating to the number and identity of the GP practices it is contact with and disclose it to the complainant, the ICB has breached section 1(1) of the FOIA

### **Other matters**

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27. Section 16 of FOIA places a duty on a public authority to provide advice and assistance, so far as it would reasonable to expect the authority to do so, to a person who makes a request for information.
28. The Commissioner has considered the complainant's view that the ICB failed to meet its obligations under section 16 of FOIA. The complainant considers the ICB failed to clarify / interpret the request and was generally unhelpful. The Commissioner has read the wording of the request and is satisfied that it relates to information about chargeable services provided to patients for each GP practice. He is therefore satisfied no further clarification or assistance in interpreting the request was necessary in this case.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

**Pam Clements  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**