

**Freedom of Information Act 2000**  
**Environmental Information Regulations 2004**  
**Decision notice**

**Date:** 25 November 2022

**Public Authority:** Manchester University NHS Foundation Trust  
**Address:** Cobbett House  
Oxford Road  
Manchester  
M13 9WL

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the sale of a decommissioned hospital site.
2. The Trust withheld information under section 43(2) (commercial interests) of FOIA. It also confirmed that it held no further information relevant to the request.
3. The Commissioner's decision is as follows:
  - The Trust should have handled the request under the Environmental Information Regulations ('the EIR') and therefore breached regulation 14(3) as it incorrectly issued its refusal under FOIA and not the EIR.
  - The withheld information engages regulation 12(5)(e) (commercial or industrial information) and the public interest favours maintaining the exception.
  - On the balance of probabilities, the Trust holds no further information relevant to the request.
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 7 June 2022, the complainant wrote to the Trust and requested the following information:

"This is a Freedom of Information request in respect of Stretford Memorial Hospital, 226 Seymour Grove, Old Trafford, Stretford, Manchester M16 0DU. Please see as enc - NHS Completion 1st June 2022/ The completion date has now passed & Land Registry details for the property remain unchanged.

Q1) Has the property sold?

Q2) If contracts have not exchanged, please confirm the completion schedule.

Q3) If the sale has not been completed, please explain why.

Please see as enc - due diligence spreadsheet. [Redacted] recently submitted full plans to Trafford Borough Council in respect of Stretford Memorial Hospital. Various news agencies run articles in support of the proposal &, as a result of media attention, [Redacted] received feedback from a 3rd party who claimed to be completing the site acquisition.

The complainant raised feedback through his former business London Capital Asset Management which was dissolved at Companies House in 2018. This abnormality prompted a due diligence check, which is summarised as attached using information acquired from Companies House.

Q4) Did Avison Young, the exclusive property agent, make the NHS aware of any Companies House due diligence, or contract completion default risks, before or after the NHS issued Heads of Terms to the 3rd party?"

6. The Trust responded and, in response to questions 1 and 2, informed the complainant that contracts had been exchanged. It refused to provide the information that it held that fell within the scope of questions 3 and 4, citing section 43(2) (commercial interests) of FOIA.
7. The complainant requested an internal review on 5 July 2022, disputing the Trust's application of section 43(2). The complainant queried, in relation to question 2 above:
- "What is the current completion schedule?"
8. The Trust provided its internal review outcome on 4 August 2022. It maintained its reliance on section 43(2). The Trust also identified that,

in relation to question 2, the complainant was now making a new request for information. Nevertheless, it confirmed it didn't hold a current completion schedule.

9. When raising their concern with the Commissioner, the complainant disputed: the Trust's application of section 43(2) and its position that it didn't hold the completion schedule.

## **Reasons for decision**

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### **Regulation 12(5)(e)**

10. The Commissioner has carefully considered whether the request should have been dealt with under FOIA or the EIR. Whilst the request relates to the sale of a decommissioned hospital, it also relates to the sale of the land that the hospital stands on. As such, the Commissioner is satisfied that the information is environmental information under regulation 2(1)(a) of the EIR<sup>1</sup>, and also regulation 2(1)(c).
11. Because the Trust issued its refusal under FOIA and not the EIR it breached regulation 14(3) of the EIR, which states that a public authority must state, no later than 20 working days after received the request, what exceptions it is relying upon.
12. Regulation 12(5)(e) states that a public authority can refuse to disclose information if disclosure would adversely affect the confidentiality of commercial information where such confidentiality is provided by law to protect a legitimate economic interest.
13. The exception imposes a four-stage test which is:
  - Is the information commercial in nature?
  - Is the information subject to confidentiality provided by law?
  - Is the confidentiality required to protect a legitimate economic interest?
  - Would the confidentiality be adversely affected by disclosure?

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

14. The Trust has provided the Commissioner with a copy of the information that is being withheld in this instance which is emails between the Trust and its commercial estate agent Avison Young, the preferred bidder for the hospital and the Trust's solicitors.
15. The emails discussed details of the sale of the site and ongoing negotiations. The Commissioner is satisfied the withheld information is commercial.
16. The Commissioner considers confidentiality provided by law to include confidentiality imposed on any person by the common law duty of confidence, contractual obligation, or statute.
17. The Trust has explained that 'The disposal of the site was through a recognised, compliant, formal tender process where there is an expectation of confidentiality, particularly during the negotiations with a preferred bidder prior to completion of sale.' It has also explained that there is a general expectation of confidentiality, from both parties, during the tendering process.
18. Having studied the withheld information, the Commissioner is satisfied that it is not trivial and is not already in the public domain. He is also satisfied that it was imparted in circumstances creating an obligation of confidence and therefore, the withheld information is subject to confidentiality provided by law.
19. The Trust has explained that, at the time that the request was received, 'detailed negotiations' with the preferred bidder were ongoing. The Trust has explained that the sale of the site commenced in late 2020 and had taken over eighteen months to reach the point, when the request was made in June 2022, where it was nearing completion. The Trust is concerned that, given the considerable length of time taken already, disclosure would have caused further delay and frustration to the preferred bidder who then may have revised details of their bid or pulled out completely.
20. The Trust has elaborated that, because the sale was taking so long, had the preferred bidder dropped out, it would have been unable to continue with its remaining shortlisted bidders and would have been forced to start a new tender process for the site.
21. The Trust has concluded that 'It was important that the sale concluded as quickly as possible as the Trust continued to incur costs including monetary expenditure to ensure and maintain the security and safety of the decommissioned site until its disposal; and the cost of the tender process itself.'
22. The Commissioner will now go onto consider whether this confidentiality is required to protect a legitimate economic interest. The Trust

acknowledges that FOIA (and the EIR) is applicant blind, however, has given the Commissioner some contextual information about this request and the complainant.

23. The Commissioner understands that the complainant represents an organisation who submitted a bid for the site but was not placed on the shortlist. Even though the complainant was made aware that their bid had not been shortlisted, they submitted a planning application for the site, to Trafford Council. The Trust is concerned that the complainant then arranged for several news articles about their proposed re-development to be published.
24. These news articles were of concern to the preferred bidder who made themselves known to the complainant. The Trust has explained that the complainant then performed their own personal checks against the now identified preferred bidder and submitted these findings to the Trust and their local MP.
25. Ultimately, the Trust is concerned that the circumstances surrounding this request, and the prior involvement of the complainant, elevate the likelihood in this instance to disclosure 'would' prejudice the commercial interests of the Trust. Looking at the detail about the contract contained within the emails and keeping in mind the complainant's prior involvement in the matter, the Commissioner is satisfied that disclosure would delay, or might even have led to the preferred bidder dropping out of the sale, which would prejudice the commercial interests of the Trust.
26. The Trust has also provided the Commissioner with evidence of advice it received which indicated that, due to the significant changes in the UK economy from 2020-2022, were it required to start a new tendering process for the site it would not obtain the same price.
27. With the above in mind, the Commissioner is satisfied that disclosure would harm the confidence and, by extension, the economic interests of the Trust. The Commissioner will therefore go onto consider whether the public interest lies in disclosure or in maintaining the exception.
28. On the one hand disclosure would demonstrate accountability and transparency. It would also shed light on the process of selling the site and provide reassurance to those, including the complainant, who might have concerns about the Trust's preferred bidder.
29. On the other hand, disclosure would delay the completion process, at an increased cost to the Trust, which is not in the public interest.
30. In this case, the Commissioner considers the public interest lies in maintaining the exception. The Commissioner acknowledges that the complainant has concerns about the acquisition of the site; the

complainant is concerned that the preferred bidder is insolvent and these are valid concerns for the complainant to have. However, they do appear to represent largely private concerns and the Commissioner notes that the preferred bidder passed the proper due diligence checks that were undertaken in line with industry standards.

31. Ultimately, bearing in mind the role of the NHS Trust, the Commissioner considers the public interest lies in allowing it to complete the sale, rather than delay it any further and incur further costs.

### **Regulation 12(4)(a) – information held/not held**

32. The Trust has explained that 'The FOI request from [Redacted] was received on 7 June 2022, and the Trust responded on 5 July 2022. At this time, the completion schedule date was 27th July 2022.'
33. The Trust has also explained that the disposal of the site was handled by a small, expert team within the Estates and Facilities Department. When the complainant requested their internal review (and made their new request for the completion schedule), the Trust asked this team for the new completion schedule date. It was confirmed that, at that point, there was no new agreed completion schedule following the previously missed date of 27 July 2022.
34. The scope of the EIR is clear; it encompasses recorded information at the time that the request was made. Without evidence to suggest otherwise, the Commissioner is satisfied that, at the time that the Trust carried out its internal review for the original request (and made enquiries about the new completion schedule) this information was not held.
35. Therefore, on the balance of probabilities, the Commissioner is satisfied that the Trust does not hold any further information that would fall within the scope of the request.

### **Other matters**

36. The Trust has explained to the Commissioner that the complainant has submitted 12 requests relating to the site and the Trust has balanced its obligations under FOIA (or the EIR) with the need to not prejudice the tender process. It has informed the complainant that, should they still require further information relating to the preferred bidder's acquisition of the site, this could likely be provided after the sale of the site has completed.
37. Both FOIA and the EIR are applicant blind which means that, largely, the motives or identity of the requestor must be disregarded. However, the complainant should be mindful not to abuse the information rights process and use such requests as an attempt to delay or obfuscate the

tender process. Both FOIA and the EIR have provisions for requests that might be vexatious or manifestly unreasonable.

## **Right of appeal**

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38. 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)

39. 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.

40. 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**

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