

Ref: CCG Dec16

Corporate Services
NHS Liverpool Clinical Commissioning Group
The Department
Lewis's Building
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Liverpool
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Email: foi@liverpoolccg.nhs.uk

20th February 2017

Re: Freedom of Information Request

Further to our letter to you dated 11th January 2017 in regard to your Freedom of Information request concerning the recent Telehealth procurement, I write to update you on the CCG's position following our decision to re-run the ITT stage of the procurement.

In our letter, we confirmed that the CCG did in fact hold the information requested and informed you of our decision to claim a 'reasonable' extension of time whilst we further considered the public interest test and the qualified exemptions of Section 43 of the Freedom of Information Act. On 1st February 2017 formal notice was given to all bidders of the CCG's decision to 're-run' the ITT stage of the Telehealth procurement. As this effectively places the procurement exercise firmly back in the 'live' stage, we have determined that the information requested remains exempt from disclosure under Section 43 and Section 44 of the Freedom of Information Act.

In light of decision to re-run the ITT stage, the CCG has also considered its obligations under the Public Contract Regulations (PCR) 2006. The PCR set out the procedures that must be followed when certain public sector contracts are offered for tender. Information forwarded to a public authority by a contractor during a procurement exercise is protected by the 'statutory prohibition' on disclosure established by Regulation 43 of the PCR (if is it reasonably designated as confidential). Regulation 43 of the Public Contract Regulations 2006 states that:

- (1) Subject to the provisions of these Regulations, a contracting authority shall not disclose information forwarded to it by an economic operator which the economic operator has reasonably designated as confidential.*
- (2) In this regulation, confidential information includes technical or trade secrets and confidential aspects of tenders.*

Section 44 of the Freedom of Information Act provides that information is exempt if its disclosure is prohibited by or under any enactment (this would include the prohibition

created by Regulation 43 of the Public Contract Regulations 2006). As we have determined that the information requested is protected by Regulation 43 of the PCR, we have also applied the exemption under Section 44 of the Freedom of Information Act. As Section 44 FOIA is an *absolute* exemption, there is no need for the CCG to consider the public interest test.

In considering your request, the CCG has also taken into account the Cabinet Office Efficiency & Reform Group (ERG) Guidance Note (December 2010) - "Publication of Tender Documentation" and Guidance Note (January 2011) - "Publication of New Central Government Contracts". This guidance states that once a public authority's procurement competition has been completed, there is a strong public interest in demonstrating that the criteria used was fair and that the best overall bidder was selected. The ERG guidance is clear in that upon completion of the procurement exercise, tender evaluation information on unsuccessful bidders (including their ranking) should generally be disclosed, with exceptions applied for sensitive information. Therefore, the CCG will re-consider your request in line with the public interest test described above once the Telehealth procurement has been completed and is no longer 'in phase'.

We wish to take this opportunity to inform you that a formal complaints and internal review procedure is available to applicants who are unhappy with responses provided to FOI requests. You can formally request an internal review within a reasonable period of time (2 calendar months) from the date this response was issued.

Where you are not satisfied with the decision of the internal review you may apply directly to the Information Commissioners Office (ICO) for a further review of that decision. Generally, the ICO cannot make a decision unless you have exhausted our complaints procedure in the first instance.

The ICO can be contacted at:

Information Commissioners Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
www.ico.gov.uk

Should you require any further information, clarification regarding this response or do not feel that your request has been answered as you would expect, please contact us to discuss.

Yours sincerely,

**Customer Relations Lead
NHS Liverpool CCG**