

25 October 2018

Dear

Re: Request for information under the Freedom of Information Act 2000
Ref no: CAS-03890-D4X5L9-ES (NHS East Staffordshire CCG)

Thank you for your correspondence dated 17 October 2018 making a request under the Freedom of Information Act 2000 for information which may be held by NHS East Staffordshire CCG

You requested the following information and our response is detailed below:

Request for information under the Freedom of Information Act 2000 in connection with the contract between East Staffordshire Clinical Commissioning Group and Virgin Care Services Limited for the Improving Lives (the "Contract")

1. This letter is a Freedom of Information Act Request made by the University Hospitals of Derby and Burton NHS Foundation Trust, requesting a copy of the Contract and any associated amendments and/or variations from time to time.
2. We note that the CCG has previously disclosed a redacted copy of the Contract in response to a FOI request made on 4 May 2017. However, the Contract was previously advertised as part of a public procurement process, meaning that its terms are already in the public domain and not, therefore, confidential. In the event that any genuinely confidential/commercially sensitive information has since been inserted into the Contract, such as pricing (which is not otherwise in the public domain via budget publications or other means), we consider that any commercially sensitive information can be easily redacted from any copy of the Contract you provide to us.
3. As you will be aware, we are a subcontractor of Virgin Care Services Limited and our subcontracts directly refer to the Contract. It is therefore appropriate, and would be helpful, for us to have a copy of the Contract. A copy has been requested directly from the CCG a number of times without success, which has led to the need to make this formal request.

NHS East Staffordshire CCG does hold the information requested, and this is detailed in the attached document and below:

Please note: There is no allowance given by NHS East Staffordshire CCG for this information to be used for any direct or indirect commercial gain, by either yourself or any third party you may be representing (e.g. a commercial company who could use the information for their own tendering etc). There is also further information around **Copyright and the Re-use of Public Sector Information Regulations** detailed at the bottom of this letter.

Reasons for Redaction / Exemptions Applied:

- **CONTRACT REFERENCE - Governance & Regulatory, Representatives, Signature Blocks: Section 40(2) / Data Protection Act 1998** (absolute exemption rationale = sharing of Personal Data including names, signatures and contact information in this manner is not objectively justifiable under any of the exemptions set out in Schedule 2, Data Protection Act 1998. All Virgin Care Services Limited-identifiable information, other than the name of the contract signatory V McVey and ESCCG identifiable information will be redacted other than signatory names which will remain: Tony Bruce and Wendy Kerr).

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Cannock Chase CCG Chair: Dr Mo Huda **East Staffordshire CCG Chair:** Dr Charles Pidsley **North Staffordshire CCG Chair:** Dr Alison Bradley **Stoke on Trent CCG Chair:** Dr Ruth Chambers **Stafford and Surrounds CCG Chair:** Dr Paddy Hannigan **South East Staffordshire and Seisdon Peninsula CCG Chair:** Dr Shammy Noor **Accountable Officer:** Marcus Warnes

- CONTRACT REFERENCE – Schedule 2 Part A, Service Specification: **Section 43(1) – Trade Secret + Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = contract documentation issued during the tender process. The Public Interest Test has been applied in withholding the information, and in the CCG’s view, there is a strong public interest in favour of withholding the information to ensure that the Commissioner is able to negotiate freely with providers, and that contractors like Virgin Care can negotiate freely with commissioners and to ensure that there is continued fair competition for public contracts. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).
- CONTRACT REFERENCE – Schedule 2 Part H, Transition Arrangements: **Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = this section describes the details of agreement reached between the CCG and Virgin Care in relation to the Transition Period and the mobilisation of the services. If disclosed, the information would be available to other providers with whom the CCG may wish to contract with in the future. If such providers have knowledge of the terms agreed between the CCG and Virgin Care, this could be harmful to the CCG’s ability to negotiate competitively with those providers in the future. The Public Interest Test has been applied in withholding the information, and in the CCG’s view, there is a strong public interest in favour of withholding the information to ensure that the Commissioner is able to negotiate freely with providers, and that contractors like Virgin Care can negotiate freely with commissioners and to ensure that there is continued fair competition for public contracts. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).
- CONTRACT REFERENCE – Schedule 2 Part I, Exit Arrangements: **Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = this section describes the details of agreement reached between the CCG and Virgin Care in relation to Exit Arrangements. If disclosed, the information would be available to other providers with whom the CCG may wish to contract with in the future. If such providers have knowledge of the terms agreed between the CCG and Virgin Care, this could be harmful to the CCG’s ability to negotiate competitively with those providers in the future. The Public Interest Test has been applied in withholding the information, and in the CCG’s view, there is a strong public interest in favour of withholding the information to ensure that the Commissioner is able to negotiate freely with providers, and that contractors like Virgin Care can negotiate freely with commissioners and to ensure that there is continued fair competition for public contracts. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).
- CONTRACT REFERENCE – Schedule 3 Part F, Expected Annual Contract Value: **Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = this section describes the details of agreement reached between the CCG and Virgin Care in relation to payments. If disclosed, the information would be available to other providers with whom the CCG may wish to contract with in the future. If such providers have knowledge of the terms agreed between the CCG and Virgin Care, this could be harmful to the CCG’s ability to negotiate competitively with those providers in the future. The Public Interest Test has been applied in withholding the information, and in the CCG’s view, there is a strong public interest in favour of withholding the information to ensure that the Commissioner is able to negotiate freely with providers, and that contractors like Virgin Care can negotiate freely with commissioners and to ensure that there is continued fair competition for public contracts. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public

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interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).

- **CONTRACT REFERENCE – Schedule 4 Part F, Local Incentive Scheme: Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = this section describes the details of agreement reached between the CCG and Virgin Care in relation to payments. If disclosed, the information would be available to other providers with whom the CCG may wish to contract with in the future. If such providers have knowledge of the terms agreed between the CCG and Virgin Care, this could be harmful to the CCG's ability to negotiate competitively with those providers in the future. The Public Interest Test has been applied in withholding the information, and in the CCG's view, there is a strong public interest in favour of withholding the information to ensure that the Commissioner is able to negotiate freely with providers, and that contractors like Virgin Care can negotiate freely with commissioners and to ensure that there is continued fair competition for public contracts. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).
- **CONTRACT REFERENCE - Signature Blocks, Contract Variation dated 14 April 2016 + Signature Blocks, Contract Variation dated 13 July 2016: Section 40(2) / Data Protection Act 1998** (absolute exemption rationale = sharing of Personal Data including names, signatures and contact information in this manner is not objectively justifiable under any of the exemptions set out in Schedule 2, Data Protection Act 1998. All Virgin Care Services Limited-identifiable information, other than the name of the contract signatory V McVey and ESCCG identifiable information will be redacted other than signatory names which will remain: Tony Bruce and Wendy Kerr).
- **CONTRACT REFERENCE - Clauses 5.5 to 9 inclusive, Contract Variation dated 14 April 2016: Section 43(2) – Prejudicial to Commercial Interests** (qualified exemption rationale = the contract variation operates to vary the original contract, and so a consistent approach to redacting information is being taken from where the equivalent was redacted in the original contract. Disclosure under FOIA is not required to protect the public interest in the transparency of public spending. The public interest test which applies to the Section 43 exemption (Commercial Interest) is therefore satisfied).

Right of appeal

Should you require any further information or clarification regarding this response, or do not feel that your request has been answered as you would expect, please contact the FOI team to discuss. However, if you remain dissatisfied with the service you have received in relation to your request and wish to request a review of our decision, this can be formally requested in writing and must be within a reasonable period of time (two calendar months) from the date this response was issued

Initially you should write to the freedom of information officer, either by email on MLCSU.FOITeam@nhs.net or post to Jubilee House, Lancashire Business Park, Leyland, PR26 6TR, specifying why you feel you have been wrongly denied access to the information requested. The freedom of information team will make sure your request is investigated by an independent reviewer who was not involved in the original consideration of your request and a written response will be provided within 20 working days.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioners Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by NHS East Staffordshire CCG. The ICO can be contacted at:

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Copyright and the Re-use of Public Sector Information Regulations

Most of the information that we provide in response to Freedom of Information Act 2000 requests will be subject to copyright protection. In most cases the copyright will be owned by NHS East Staffordshire CCG. The copyright in other information may be owned by another person or organisation, as indicated in the information itself.

You are free to use any information supplied for your own use, including for non-commercial research purposes. The information may also be used for the purposes of news reporting. However, any other type of re-use, for example, by publishing the information or issuing copies to the public will require the permission of the copyright owner. For information where the copyright is owned by NHS East Staffordshire CCG please submit a request in writing stating:

- Name and address of applicant requiring permission for re-use of the information.
- Full details of the document/information required for re-use sufficient for East Staffordshire CCG to identify it.
- The purpose for which the document/information is to be re-used.

For information where the copyright is owned by another person or organisation, you must apply to the copyright owner to obtain their permission. However, if you require more information on copyright please see the ICO guidance which can be accessed via the following link:

<https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>

Yours sincerely



Sally Young
Director of Corporate Services, Governance and Communications

NHS Cannock Chase CCG
NHS East Staffordshire CCG
NHS North Staffordshire CCG
NHS South East Staffordshire and Seisdon Peninsula CCG
NHS Stafford and Surrounds CCG
NHS Stoke-on-Trent CCG