



**Liverpool**

**Clinical Commissioning Group**

Corporate Services

NHS Liverpool Clinical Commissioning Group

The Department

Lewis's Building

Renshaw Street

Liverpool

L1 2SA

**Ref: 59556**

25<sup>th</sup> July 2019

Email:

Email: [foi@liverpoolccg.nhs.uk](mailto:foi@liverpoolccg.nhs.uk)

Dear

## **Re: Freedom of Information Request**

Further to your Freedom of Information request received at the CCG on 14<sup>th</sup> June 2019, I would firstly like to thank you for your patience whilst we carried out enquiries as to the extent of the information the CCG holds which would fall within the scope of your request.

### **Request:**

- By way of FOI ALL material relating to NHS England's requirement for the Chief Finance Officer to resign their position at Liverpool CCG and any reports and paperwork which supported the reasons for that requirement for them to leave.
- Could I have copies of any agreements to terms and a copy of ANY references, which were supplied by or on behalf of the CCG.
- Further to this, has the CCG completed any investigations/reports on the governance and work (practices) of the CCG, which highlighted deficiencies in the services provided by the previous executive regime.
- What has the CCG done to ensure failings in the past will not happen again?

### **Response**

The CCG holds information relating to your request in that it holds information concerning the resignation of the Chief Finance Officer (CFO). The CCG is able to provide the following information in response to your request:

In June 2017, NHS England published its Remuneration Review Report, which culminated in directions being imposed on Liverpool CCG by NHS England. An action plan was agreed between Liverpool CCG and NHS England, which set out the actions expected of Liverpool CCG to comply with both the recommendations made in the Remuneration Report and the directions issued. Both the Remuneration Report and the CCG's Directions

are within the public domain and therefore the CCG relies on section 21 of the Freedom of Information Act ("FOIA") in not disclosing these documents in response to your request. We also understand that you have previously gained access to these specific documents.

The summary narrative below provides a timetable of events leading to the then Chief Finance Officer's resignation from NHS Liverpool CCG:

- On 8<sup>th</sup> August 2017, a meeting of the CCG Governing Body and Senior Management Team was held to discuss the matter. Representatives from NHS England also attended the meeting. NHS England outlined the subsequent imposition of legal Directions upon the CCG by NHS England, which were to come into effect from 22<sup>nd</sup> August 2017;
- On 9<sup>th</sup> August 2017, the CFO agreed to resign their position. Negotiations with the CFO and their legal advisers were held as to their departure from the post;
- The CFO resigned their position as Chief Finance Officer with the CCG on 11<sup>th</sup> August 2017;
- On 12<sup>th</sup> September 2017 the CCG's Governing Body formally approved the actions required of the CCG and associated terms and conditions, which concluded with the resignation of the CFO.

However, in relation to the remainder of the information held by the CCG, the CCG relies on the following exemptions in not disclosing the information. It is possible that some information could be provided; however, to be able to do this, the number and extent of redactions required to the information held in reliance on the exemptions referred to below would mean that the information disclosed would be meaningless.

## **Correspondence between NHS England and Liverpool CCG and Private (Part 2) Minutes of the CCG's Governing Body**

Liverpool CCG holds correspondence between the CCG and NHS England, including notes of telephone discussions with NHS England. The CCG also holds information presented to the Governing Body of the CCG in private session. Some of this information will be the personal data of the CFO and the CCG deems such information exempt from disclosure in reliance on sections 40(2) and 41 of the FOIA, as referred to below.

Some of the information held is deemed to be exempt from disclosure in reliance on sections 31(1)(g) and 31(2)(b) and (c) of the FOIA. This is on the basis that its disclosure would be likely to prejudice the exercise by the CCG and NHS England of their functions for the purposes of ascertaining whether any person is responsible for any improper conduct, or whether any circumstances which would justify regulatory action, exist or may arise.

The outcome of the exercise of the CCG's and NHS England's functions was a report by NHS England culminating in recommendations being made to the CCG and directions subsequently being imposed. As stated above, this information is already within the public domain. If the CCG were to disclose the detail of its communications and correspondence with NHS England into the public domain, it would be likely to prejudice how such

functions were carried out in future (in view of the sensitivity of the circumstances) as it would impact on the way in which the two statutory bodies engaged with each other and the matters that were discussed and explored in written communications. It might also deter personnel from both bodies who gave information and assisted the review from cooperating and contributing in the same way in future if they understood that their respective contributions would be made public.

If the CCG were to disclose the information provided to the Governing Body in private session this would be likely to prejudice the way in which the CCG operates in future and conducts its Governing Body meetings in private session.

In considering the public interest test, as referred to above the conclusion of NHS England's Remuneration Review of Liverpool CCG (and the resultant actions) are already in the public domain. The public interest in transparency and accountability has therefore, in the CCG's view, already been satisfied. The CCG does not therefore deem it is in the public interest for detailed communications between the CCG and NHS England, or the Governing Body private session information concerning the review and the CFO's resignation, to be disclosed into the public domain. A significant proportion of the information constitutes 'personal data' and the circumstances in which this information has been created and processed are sensitive. The CCG believes that the public interest in maintaining the exemption (to prevent prejudice to the exercise of the CCG's and NHS England's functions) outweighs the public interest in disclosing the information.

Some of this information held is also deemed to be exempt information in reliance on section 36(2) (b) and/or (c) of the FOIA on the basis that disclosure would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation, or would otherwise be likely to prejudice the effective conduct of public affairs.

The qualified person at the CCG for the purposes of this exemption is the CCG's Chief Officer. Ms Ledward has considered this matter and concluded that in her reasonable opinion disclosure would be more likely than not to have the above effect. In reaching this conclusion, she relies on the same issues as identified above with regards to the impact that disclosure would be likely to have on the future exercise of the CCG's and NHS England's functions, communications between the two bodies and the way in which the CCG's Governing Body deliberates over confidential matters in private session.

Again, the public interest test has been considered and the same conclusion reached as above for the same reasons. The CCG believes that the public interest in maintaining the exemption (to prevent the inhibition or prejudice set out in section 36(2) (b) and (c)) outweighs the public interest in disclosing the information.

### **Personal data – about the CFO and others**

The CCG deems this information exempt from disclosure under section 40(2) of the FOIA. This is a two stage test and to rely on this exemption, the criteria in section 40(2)(a) and section 40(2)(b) must be met:

“(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which does not fall within subsection (1), and

(b) the first, second or third condition below is satisfied.

The data does not fall within subsection (1) as the CFO is not making the request to access their own data. The personal data is data relating to somebody other than yourself and therefore the criteria in section 40(2)(a) is met.

The CCG believes that the criteria in section 40(2)(b) is also met because the first condition is satisfied. The first condition reads as follows:

“(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles”.

The data protection principles are set out at Article 5 of the General Data Protection Regulation 2018 ('GDPR'). Disclosure of the personal data relating to the CFO would breach Article 5(1)(a) of the GDPR as processing in this manner would not be lawful or fair. The CFO has not provided consent for their personal data to be disclosed in this manner and the CCG does not believe it is fair or reasonable to disclose such data. As regards the lawfulness of disclosure, the CCG has considered whether Article 6(1)(f) of the GDPR would permit the disclosure of the data. This reads:

*“Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”*

In view of the information which is already publically available regarding NHS England's review of the CCG and the CFO's resignation, and in view of the information provided by the CCG in response to your request, the CCG does not believe that the disclosure is necessary for the purposes of legitimate interests pursued by you, nor does it believe that any such legitimate interests would override the interests or fundamental rights to privacy of the CFO.

In considering the impact on the CFO, the CCG has considered each of the tests set out in the ICO's guidance on section 40.

“What potential harm or distress may disclosure cause?” It is likely that disclosure would cause considerable distress to the CFO in view of the nature of the information held and the circumstances in which the information was obtained/created. The CFO's resignation was subject to agreed terms and conditions, which the CCG believes is exempt from disclosure in reliance on section 40(2).

“Is the information already in the public domain?” Some of the personal information held by the CCG is not in the public domain. However, a large amount of information about the CFO's resignation and the directions given to the CCG is within the public domain.

“Is the information already known to some individuals?” Some of the personal data held will be known to a small group of individuals other than the data subject i.e. employees of the CCG and NHS England involved in the review and the CFO's resignation, and any

legal professionals involved. However, a disclosure to the public at large would not be deemed lawful or fair.

“Has the individual expressed concern or objected to the disclosure?” and “What are the reasonable expectations of the individual?” The CFO’s resignation was subject to agreed terms and conditions. The CFO therefore has a very strong and reasonable expectation that such details will not be disclosed. The CFO will also have an expectation that their right to a private life under the Human Rights Act 1998 will be respected. Details of the CFO’s resignation are already within the public domain.

For these reasons, the CCG has concluded that when balancing the legitimate interest in transparency in public life against the privacy of the individual concerned, the privacy rights of the individual outweigh any legitimate interests in disclosure.

It is also the case that the criteria in section 40(2)(b) is met because the third condition is satisfied in relation to some of the information held. The third condition reads:

“(4A) The third condition is that....on a request under Article 15(1) of the GDPR.... for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018...”

The CCG believes that if the CFO were to make a subject access request for their own personal data held by the CCG, some of the data would be withheld in reliance on provisions within Schedule 2 of the Data Protection Act 2018. In applying the public interest test to this exemption, the CCG believes that the public interest in maintaining the exemption (on the basis that in the CCG’s view it would be a breach of the data protection principles to disclose into the public domain detailed personal information that would not be disclosed to the data subject in response to a subject access request) outweighs the public interest in disclosing the information.

In view of the above, the CCG deems the information to be exempt from disclosure under section 40(2) of the FOIA.

No reference has been provided by the CCG in respect of the CFO. A personal reference was provided by the then Chair of Liverpool CCG. Liverpool CCG does not hold a copy of this reference and was unaware of its release at the time.

## **Legal Advice**

Legal advice was obtained by both the CCG and by the CFO in relation to the CFO’s resignation from the CCG and the terms and conditions of their departure. The CCG holds legal advice provided to the CCG and also holds correspondence between the CCG and the CFO’s legal advisers. The CCG deems such information to be subject to legal professional privilege and therefore exempt from disclosure under section 42 of the FOIA. As information is already within the public domain as regards NHS England’s review of the CCG and the CFO’s resignation, the CCG has considered the public interest test and does not deem it to be in the public interest for the precise details of the terms and conditions of the CFO’s resignation, nor for legal advice in relation to those terms and conditions to be disclosed in view of the confidential and sensitive nature of the issue at hand. The CCG believes therefore that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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](http://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,

**Corporate Services Team  
NHS Liverpool CCG**