

9 May 2017

██████████  
████████████████████

Wellington House  
133-155 Waterloo Road  
London SE1 8UG

T: 020 3747 0000  
E: [nhsi.enquiries@nhs.net](mailto:nhsi.enquiries@nhs.net)  
W: [improvement.nhs.uk](http://improvement.nhs.uk)

**By post**

████████████████████  
██████████  
████████████████████  
████████████████████  
██████████

Dear ██████

**Request under the Freedom of Information Act 2000 (the “FOI Act”)**

I refer to your letter of 20 February 2017 to Liverpool Care Commissioning Group (“Liverpool CCG”) in which you requested information under the FOI Act.

Your request was passed to NHS Improvement on 7 April 2017 as we hold the information requested. Since 1 April 2016, Monitor and the NHS Trust Development Authority (“NHS TDA”) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means NHS TDA.

**Your request**

You made the following request:

- 1. Please list all bidders for the contracts for Liverpool community services and Sefton community services.*
- 2. Please provide the tender evaluation and bid scoring information for each bidder involved in the contracts specified in question 1.*

**Decision**

NHS Improvement holds the information that you have requested and I have decided to disclose some of the information to you. I have decided to withhold the remainder on the basis of the exemptions under the FOI Act described in further detail below.

In 2016, NHS Improvement requested proposals for Liverpool Community Health NHS Trust's two core services: Liverpool community and South Sefton services. Two bids were received for each of the services. In answer to part 1 of your request, the two bidders for each set of services were Bridgewater Community NHS Foundation Trust and Mersey Care NHS Foundation Trust.

In answer to part 2 of your request, I have decided to release the overall scores awarded to each bidder in the table below. The scores were reached following an evaluation of the bids against these criteria: quality; deliverability; sustainability and finance.

Contract	Bidder	Score
Liverpool Community		
	Bridgewater Community NHS Foundation Trust	59.2%
	Mersey Care NHS Foundation Trust	54.2%
South Sefton		
	Bridgewater Community NHS Foundation Trust	53.4%
	Mersey Care NHS Foundation Trust	56.6%

NHS Improvement also holds further evaluation and scoring information for each bidder. I have decided to withhold this information on the application of the exemptions under sections 36 and 43 of the FOI Act.

### **Section 36(2) – prejudice to effective conduct of public affairs**

NHS Improvement has decided to withhold the tender evaluation documents on the basis that they fall within sections 36(2)(b)(ii) and 36(2)(c) of the FOI Act (prejudice of the effective conduct of public affairs).

This exemption is engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)) and would be likely to prejudice the effective conduct of public affairs (36(2)(c)).

The information being withheld includes written notes of the evaluation panel setting out the detailed considerations made during the evaluation process, including views and judgments of panel members, and feedback to the trusts on the evaluation process. In order to carry out its statutory functions NHS Improvement must be able to hold free and frank discussions about commercial matters without concern that the detail of those discussions will be

disclosed. That is, public authorities must be afforded a safe space within which to deliberate and discuss matters before making a decision. If this material were published, it would be likely to restrict the candour and frankness with which similar future discussions would be conducted, as individuals would be concerned about the possibility that those views and discussions would be made public. The result would be to reduce the quality of discussion provided in such cases and an adverse impact on the ability of NHS Improvement to carry out its functions.

### **Section 43 – commercial interests**

Section 43(2) of the FOI Act provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person.

The information being withheld contains and refers to commercially sensitive bidding information (including financial information) submitted by Bridgewater Community NHS FT and Mersey Care NHS FT (“the trusts”). NHS Improvement also produced a detailed “Evaluation Feedback Report” which provides an explanation of the strengths and weaknesses of the trusts’ bids relative to the evaluation criteria. Disclosure of this information is likely to be detrimental to the trusts commercial position. For example, their competitors could use this information when bidding for the same contracts as the trusts in the future and thereby gain a commercial advantage over the trusts. NHS Improvement accepts that commercial sensitivity will lessen over time however, at the present moment, the contracts for both Liverpool Community and South Sefton services are not yet concluded and the information therefore remains live.

### **Public interest test**

Sections 36 and 43 are qualified exemptions and therefore require that a public interest test be carried out to determine whether the exemptions should be maintained.

Notwithstanding the general public interest in transparency and openness in understanding how NHS Improvement reached its view to award the services to the preferred trusts, I consider that there is stronger public interest in ensuring that all bids submitted to NHS Improvement are thoroughly evaluated by way of full and frank discussion between panel members in a safe space before a decision is reached.

There is a strong public interest in NHS Improvement being able to hold free and frank discussions, both internally and with other NHS bodies, without concern that the detail of those discussions will be disclosed inappropriately. There is a public interest in ensuring those bodies are able to have the open and confidential discussions necessary to ensure effective NHS decision making. In addition, I have considered the detrimental impact public disclosure is likely to have on the relevant providers if the information is disclosed.

I consider the public interest in disclosure is met by NHS Improvement’s disclosure of the scoring information above, along with numerous press releases and news reports about the outcomes of the competition, in a way that safeguards the legitimate interests that we are seeking to protect.

Taking into account these considerations, my view is that, on balance, the public interest in maintaining the exemptions outweigh the public interest in disclosure.

### **Review rights**

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement's staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [nhsi.foi@nhs.net](mailto:nhsi.foi@nhs.net).

### **Publication**

Please note that this letter will shortly be published on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,



### **Jill Copeland**

Delivery and Improvement Director, Cheshire and Merseyside