

Reference: FOI 27755 BUCKS 14Y

Subject: Chiltern House Medical Centre

I can confirm that the CCG does hold the information requested; please see responses below:

QUESTION	RESPONSE
<p>In accordance with the Freedom of Information Act 2000, please provide copies of any correspondence (emails or letters), minutes of any meetings and copies of any briefing papers which mention Chiltern House, from 1 December 2017 to date.</p>	<p>Please see attached all information relating to Chiltern House Medical Centre (CHMC).</p> <p>Please note: Information that does not relate to CHMC has been removed. Some information relating to CHMC has been removed as the CCG considers it exempt under S.21, S.40(2), S.41(1) and S.43(2)*.</p>

* **Section 21 Information Reasonably Accessible To The Applicant By Other-Means**

The CCG can confirm that it does hold this information, but are exempting it under [Section 21](#) Freedom of Information Act 2000 as it is reasonably accessible by other means. This is an absolute exemption. I have provided you with the links to our website which will provide you with this information.

<https://www.buckinghamshireccg.nhs.uk/wp-content/uploads/2018/05/Governing-Body-Public-pack-September-2018-v5.pdf>

<https://www.buckinghamshireccg.nhs.uk/wp-content/uploads/2017/05/PCCC-Papers-Feb-18.pdf>

<https://www.buckinghamshireccg.nhs.uk/wp-content/uploads/2017/05/Agenda-and-papers-for-PCCC-6.9.18.pdf>

* **Section 40 – Personal Information**

I can confirm that the CCG holds the information requested, but in this case we will not be providing some of it to you as it is exempt from disclosure. We are not obliged, under [section 40\(2\)](#) of the Act, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 2018 (DPA). In this instance we believe that the release of this information would contravene the first data protection principle and therefore section 40 (2) is engaged. The terms of this exemption in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

* **Section 42 – Legal Professional Privilege**

The CCG are withholding this information under [Section 42](#) (1) of the Freedom of Information Act. Section 42 of the Act provides an exemption for information that is protected by Legal Professional Privilege (LPP). This exemption protects communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the purpose of litigation.

We have considered the public interest arguments, for and against release of the information you request.

The arguments considered in favour of disclosure:

There is a general public interest in authorities being accountable for the quality of their decision-making and ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability. Transparency in the decision-making process and access to the information upon which decisions have been made can enhance this accountability. It could also be seen that there is a public interest in some cases in knowing whether or not legal advice has been followed.

The arguments considered against disclosure:

Section 42 reflects a strong public interest in the CCG being able to communicate freely with its legal advisers to provide and receive advice in confidence. Public authorities require high quality and comprehensive legal advice for the effective conduct of their business. That advice needs to be given in context and with a full appreciation of the facts, which is necessary to be sought and given in a timely fashion to ensure policy develops in a fully informed way. The legal adviser needs to be able to present the full picture to their clients, which not only includes arguments in support of their final conclusions, but also the arguments that may be made against them. It is in the nature of legal advice that often sets out the possible “for and against” arguments a particular view of weighing up their relative merits. Without such comprehensive advice the quality of the CCG’s decision-making would be much reduced for the following reasons:

- it would not be fully informed and this would be contrary to the public interest;
- to disclose information provided in a legal capacity to a third party could breach the confidentiality status of privileged communications with legal advisers.

Disclosure of legal advice provided in confidence also has a high potential to prejudice the CCGs ability to defend its legal interests, particularly when the advice has been fully considered and presented without fear or favour, which are neither in the public interest.

Conclusion

After carefully considering the opposing public interest arguments in favour of engaging the exemption and in favour of releasing the information, there is, we believe, a strong and overriding public interest in maintaining the principle of legal professional privilege.

* **Section 43 – Commercial Interests**

The CCG have been unable to provide this information as it is considered to be commercial in confidence and is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000 (FOIA). [Section 43\(2\)](#) states that information will be exempt if its disclosure would, or would be likely to, prejudice the commercial interest of any person. (A person may be an individual, a company, the public authority itself or any other legal entity.)

The information is exempt as the CCG considers that its disclosure under the Act would, or would be likely to, prejudice the commercial interests of both it and their providers' ability to participate effectively in a competitive market. This would impact all involved in future agreements as it could lead to a prospective providers gaining an advantage over others or seeming to gain such an advantage.

The following points are pertinent to the comments above:

- Any release under the FOIA is necessarily a release to the public, not to any one individual. Disclosure of this information could put the providers at an unfair disadvantage during any future procurement of services.
- The CCG holds an interim APMS contract with Primary Care Management Solutions (PCMS) for the provision of primary medical services at Chiltern House Medical Centre. This commenced on 16 July 2018. Release of financial/value information may affect future negotiations for similar contracts, or if the decision is taken to procure a new longer term provider, where financial values are obtainable by potential bidders.
- The likelihood of prejudice to the commercial interest is real due to the level of competition in the market which includes private providers.

The section 43(2) exemption is, however, a qualified exemption and the duty to disclose the requested information arises unless, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The CCG has, therefore, considered this question.

Public Interest Test

The CCG recognises that there is a public interest in the disclosure of information which facilitates the accountability and transparency of public bodies for decisions taken by them. However, there is also a public interest in the CCG being able to work within competitive markets where that results in a financial or resource benefit which is put to the wider public interest.

Having undertaken the balancing exercise, the CCG has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information, having regard to the effect that the disclosure of the information would not be in the public interest as:

- Release of the detailed information, would constitute a breach of confidentiality with those providers, which would lead to lack of trust from current and future providers, thus restricting future competition for tenders and would prejudice the CCG's ability to obtain best quality of service and value, potentially impacting on budgets set within the CCG and the NHS which is not in the public interest.
- Disclosure of the information requested could increase the risk of collusion between future bidders for these services with the possibility of price/service setting as a 'ring', which could undermine the integrity and competitive nature of procurement and would not be in the public interest.
- Disclosure would allow any competitors to calculate the financial information, this in turn could restrict the submission of competitive future bids and impact on the CCG purchasing and ability to obtain best quality of service through fair competition.
- Release of the information could restrict the submission of competitive future bids and impact on the CCG purchasing and ability to obtain best quality of service through fair competition.

Conclusion

For these reasons, the CCG concludes that it is not in the Public Interest to release information.

The information provided in this response is accurate as of 16 October 2018, and has been authorised for release by Robert Majilton, Deputy Chief Officer and Director of Sustainability & Transformation for NHS Buckinghamshire CCG.