

Reference: FOI 30335 BUCKS 14Y

Subject: Adult Community Health Services

QUESTION	RESPONSE
<p>Please could you let me know if you have plans to or will be tendering for any adult community health services over the next 5-years. Please include plans for physical and mental health services</p>	<p>I can confirm that the CCG does hold the information requested; however we have been unable to provide it 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).</p> <p>Please see below prejudice and public interest arguments.</p>

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.)

In reaching this decision the CCG has considered the likely prejudice to both the organisation and service providers, and also the public interest in the release of this information, and the CCG considers that the information requested is, by virtue of s43(2) of the FOIA, exempt information.

The information is exempt information as the CCG considers that its disclosure under the FOIA would, or would be likely to, prejudice the commercial interests of its ability to participate effectively in a competitive market for these services and in future could also lead to a prospective provider gaining an advantage over others or seeming to gain such an advantage.

We regularly review the services which we commission and take decisions through our published governance routes about tendering decisions. These are commercially sensitive and so confidential until they are published on the usual procurement portals. Providing advanced notice of potential procurements to individuals outside these standard processes, would give them unfair advantage in a competitive process by giving more time to prepare bids. This would not be in the interests of public value for money as it would not be an equitable or fair process. The CCG could then be challenged, thereby wasting public funds in legal costs.

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 these providers at an unfair disadvantage during any future service re-procurement.

- Releasing the requested information would potentially impact on the CCG's ability to obtain best value and quality of service through fair competition and potentially impact on budgets set within the CCG and the NHS.
- Within these markets, future bidders will be aware of other organisations likely to be tendering in the same field. Release of this information could potentially impact on a bidder commercially and financially should the information be utilised by a competitor in future procurement exercises to recreate service functionality.

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:

- Publication of the information requested could give future potential providers an unfair advantage in negotiating contracts with the CCG, which in turn could increase the cost of services provided under NHS contracts in the CCG area, which would not be beneficial to the public.
- 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 restrict the submission of truly competitive bids in future tender processes and impact on the CCG's 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 25 April 2019, and has been authorised for release by Robert Majilton, Deputy Chief Officer and Director of Sustainability & Transformation for NHS Buckinghamshire CCG.