



Lincolnshire
Integrated Care Board

Lincolnshire Integrated Care Board

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13 May 2024

FREEDOM OF INFORMATION – DECISION NOTICE

Dear Requester

FOI Reference Number: 72719

I refer to your email of 18 March 2024 requesting information in relation to the "primary care data gathering programme.

I have processed your request under the Environmental Information Regulations 2004 (EIR) as the information requested is environmental according to the definition in regulation 2(1)(c) of the EIR. Please note section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA but requires us to consider it under the EIR instead.

I can confirm on behalf of NHS Lincolnshire Integrated Care Board (ICB) that we do hold the information you have requested, however, we are withholding it from disclosure. Please see further details below:

The "primary care data gathering programme" is a national exercise delivered by Community Health Partnerships on behalf of NHS England. More details can be found [here](#). Its results are published on the Strategic Health Asset Planning an Evaluation (SHAPE) place atlas [here](#).

1: Under the FOI act, can I please ask for the ICS for the full dataset for its system in the primary care data gathering programme in an excel format.

Please see below for the response to question 1.

2. If it is not possible to share the full dataset, could I please receive all data (in an excel format) relating to

a) backlog maintenance and

b) size and age of GP premises for the system in the primary data gathering programme.

Question 2 a and b is not applicable as we have responded to question 1. However please note we do not hold information relating to the backlog maintenance. The ICB is not involved with maintenance or their costs. Maintenance would be the tenant or landlord responsibility, dependent on the terms of the lease – for some leases tenants are only responsible for internal repair, others for external repair etc.

Response to Q1

In 2019 a survey of GP estates was conducted, which requested all practices to complete questionnaires about their estates. This was a voluntary exercise so engagement from practices varied resulting in only some of the requested data being received. What was provided was uploaded to SHAPE, however, it was subsequently acknowledged the information was incomplete and inaccurate. Subsequently the practices were asked to provide updates to Community Health Partnerships (CHP) and uploaded that additional information to SHAPE.

CHP were commissioned to provide this programme of work by NHS England and the ICB asked GPs to assist and update the data. It was realised that the information was and still is incomplete, inaccurate and with gaps and mistakes in some areas. This information has not been made available publicly.

The ICB uses some of the data as one of the sources for baselining exercises. The SHAPE database consists of many data sources, some refresh more frequently than others and some are more reliable than others. These factors influence how the ICB uses the data.

The ICB does not own the data sought, which is subject to Data Sharing Agreements, and access is provided at a level appropriate to the individual's role.

The ICB is engaging exceptions 12(5)(e) and 12(4)(d) relating to Commercial or industrial information and ...incomplete data respectively.

12(5)(e) Commercial or industrial information

Regulation 12(5)(e) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

When applying this exception, we considered the following factors:

- The information is commercial or industrial in nature.
- Confidentiality is provided by law.
- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

GP practices are independent contractors to the NHS and hold contracts with NHS England, delegated to the ICB, under the national standard General Medical Services (GMS) GP contract. Some practices also hold contracts with the ICB under the Personal Medical Services (PMS) contract or Alternative Provider Medical Services (APMS) contract.

GP practices can claim reimbursable charges, for example rent, business rates, water and clinical waste collection charges under the Premises Cost Directions. The level of rent reimbursement is determined by independent assessment by the District Valuer's Office.

The dataset sought is information relating to GP practices estates and includes information such as a practice's Net Internal Area (NIA) and Gross Internal Area (GIA). This information is not in the public domain. To disclose this information would have a detrimental impact on the commercial relationship and interests between the practices and the ICB. There is implied confidentiality with any contractual arrangement the ICB has with GP practices and that confidentiality is protecting the economic interests of the individual GPs and landlords.

The Information Commissioners Office (ICO) guidance for EIR provides that if the first three points (as above) are met, the final point will automatically be satisfied because if the information was disclosed under the EIR, it would cease to be confidential.

The ICB has considered some public interest in disclosure such as transparency, accountability and public awareness around the use of public funds. We also have to consider the public interest factors in not disclosing the information requested as we believe it would impact upon commercial positions as detailed above. It would also influence future negotiations. Therefore, the ICB has decided that disclosure would cause harm to the respective parties' interests on the balance of probabilities.

12(4)(d) Material in the course of completion, unfinished documents, and incomplete data

The ICB has considered the following factors in favour of disclosure of the incomplete data.

The EIR applies the public interest test to all exceptions, therefore there is an even stronger assumption in favour of disclosure as the starting point for undertaking a public interest test. It is in the public interest for us to be transparent around decision-making and the use of public funds.

Disclosure now would likely generate premature and disproportionate public reaction and inaccurate assumptions based on the incomplete data. There will be public interest in understanding the likely environmental impacts of the GP estates. There will be public interest in the ability to engage with the process so that decisions can be informed by public feedback and concerns.

Notwithstanding the above, the information in the SHAPE Primary Care Data Gathering database still work in progress and is subject to regular updates, therefore the information is subject to change and correction. To disclose the incomplete information would give a misleading and inaccurate representation of issues relating to GP estates. This would not assist in forming meaningful public debate and it is in the wider public interest to ensure that this does not occur by the ICB.

Disclosure at this time would breach the common law duty of confidence owed by the ICB to its GP practices who are currently engaging with the SHAPE database, thereby undermining the principle of confidentiality, and prejudicing the necessary position of trust which the ICB must maintain with GP practices.

Disclosure would remove the safe space required for the ICB to use this granular data when dealing with GP estates. Such free space and debate is in the wider public interest as it is necessary for optimal outcomes for the ICB and all its patients and members of the public. It would paralyse the democratic process if granular levels of scrutiny of every aspect of any decision-making process was open to public debate. Resources would unnecessarily be diverted from delivering services to engage in debate on hypothetical and recondite discussions of policy. The unnecessary and untimely diversion of resources would not be in the greater public interest.

Having considered the above arguments and taking into account the presumption in favour of disclosure, we find the public interest in providing the information has been outweighed by the prejudice to the public interest that would arise from withholding the information.

We consider that the greater public interest therefore lies in maintaining the exceptions at regulation 12(4)d and 12(5)(e) and not publishing the requested information into the public domain.

I hope that this answers your queries with the information we currently hold, but if I can be of any further assistance please do not hesitate to contact me.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to

Arden & GEM Greater East Midlands Commissioning Support Unit
FOI TEAM/Corporate Communications Team
1st Floor, St John's House
East Street
Leicester
LE1 6NB

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided the ICB.

The Information Commissioner can be contacted at: telephone 0303 123 1113, email icocasework@ico.org.uk and <https://ico.org.uk/global/contact-us/>

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<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Yours faithfully
Lindsay Parker
Senior Freedom of Information Officer

On behalf of NHS Lincolnshire ICB