

FOI 0265 2024 Response

****Internal Review of FOI 0185/2024**

Dear Birmingham and Solihull Mental Health NHS Foundation Trust,

Please pass this on to the person who conducts Freedom of Information reviews.

I write to formally contest your decision to withhold information under Section 43(2) of the Freedom of Information Act 2000 (FOIA).

Your response relies heavily on the argument that disclosure would prejudice the commercial interests of both the Trust and its partners, asserting that this information is part of a confidential financial model. However, I strongly believe this decision misapplies the FOIA and overlooks key elements of the public interest.

Section 43(2) requires a clear demonstration of how disclosure would cause specific harm to the commercial interests of the Trust. You have not provided a robust explanation of the harm, nor have you justified how these interests outweigh the public's right to transparency. Simply stating that the data "may place the current contracted partners or future partners at a disadvantage" does not justify the non-disclosure of significant public financial information. As PFI contracts are long-term commitments funded by the public, the details should be transparent and subject to scrutiny, especially given the historical controversies surrounding such contracts.

Public bodies must be accountable for their financial arrangements, particularly where they involve private entities benefitting from public funds. Withholding a breakdown of these payments under the guise of "commercial sensitivity" undermines this accountability. Additionally, the general public has a right to understand the precise financial obligations of the Trust, especially given the widespread impact that financial mismanagement in such projects can have on public services.

While you refer to contractual details between the Trust and its partners, it is a well-established legal principle that confidentiality agreements cannot be used to override statutory obligations, such as those under the FOIA. Confidentiality clauses do not provide blanket immunity from disclosure, particularly where overriding public interest exists.

I urge you to reconsider your decision in light of these points. The public's right to scrutinise the financial decisions of public bodies, especially when such significant sums are involved, must take precedence over vague and unsubstantiated claims of commercial harm. Failure to disclose this information risks eroding trust in public-private partnerships and could suggest that the Trust has something to hide regarding its financial arrangements.

I request that you review this decision in accordance with the FOIA's internal review procedures. Should you maintain your refusal, I will consider escalating this matter to the Information Commissioner's Office (ICO) for further investigation.

Response

An internal review was carried out by the operations Director of Estates & Facilities and the Head of PFI for the Trust, and it was concluded that the application of the exemption Section 43 of the Freedom of Information Act 200 still stands accurate.

The requested information pertains to particular and granular terms and agreements within the contract that is expected to be confidential to the wider public as disclosure of this would:

- Create a disadvantage for the current provider and any future providers, Whereby if they were to bid for any PFI related services they could be undermined by an alternative supplier if they were to offer the same service at a lower mark. The harm that would be created from this is undermining the ability to tender on fair and equal terms, and subsequently create an unfair market competition.
- Provide granular details that are associated to the PFI shareholders and dividends, which as a Trust, we have a duty of confidence to protect this information as stipulated by our contractual agreements and relationship.
- The value of the PFI finances are commercially & contractually confidential as a result of impacting on a number of private company stakeholders within the payments terms such as financiers, shareholders, providers. Therefore as a Trust, we are obliged to maintain this contractual information confidentially .

The Trust acknowledges the public interests in the disclosure of the requested information, specifically in transparency with respect to expenditure as a means of assisting the taxpayer to ascertain how public funded services are operating.

However, there is a competing public interest in withholding this information to preserve a fair market competition for the ability of public authorities to obtain value for money when sourcing services. As well as adhering to our duty of confidence in respect to the contractual agreements we have in place with suppliers.