



11 September 2018

## FREEDOM OF INFORMATION – DECISION NOTICE

Dear Requester

### FOI Reference Number: 18372

I refer to your email of 19 July requesting information in respect of fertility treatment. Further to our email of 16 August in which we advised we were considering the public interest in disclosure of the information, I am pleased to provide the following information.

I can confirm on behalf of Great Yarmouth and Waveney, North Norfolk, South Norfolk, Norwich and West Norfolk CCGs and in accordance with S.1 (1) of the Freedom of Information Act 2000 (FOIA) that we do hold the information that you have requested. A response to each element of your request is detailed below and within the attached:

*I am writing on behalf of Fertility Fairness, a national umbrella group representing a number of organisations working in the field of fertility treatment.*

*We are compiling data about availability of fertility treatment across England. Under the Freedom of Information Act 2000, we have a number of questions concerning NHS West Norfolk CCG's provision of this treatment.*

*Please provide answers to the questions in the attached spreadsheet. Please note that there are four tabs to complete.*

### Response

We responded on 19 July providing the current policy which you agreed fulfilled the first tab of your attached spreadsheet entitled "Current Provision" and you asked that we provide information for the remaining three tabs relating to 2017/18 activity and expenditure.

I can advise that we consider the information sought in tabs two and three "2017-18 Activity" and "2017-18 Expenditure" coupled with the information sought relating to overall expenditure in tab three, and any individual price paid per provider, to be exempt pursuant to Section 43.

Section 43 exempts from the general duty to release information which would, or would be likely to, prejudice the commercial interests of any entity, including the public authority holding the information.

Section 43 is a prejudice based exemption and, as such, we are required to assess both the prejudice test and the public interest test in withholding this information against that of its release. When assessing the prejudice test we need to demonstrate that there would be an impact on the commercial interests of the CCGs, third parties and the NHS as a whole, should this information be released.

We believe that to provide the current number of cycles, coupled with the price per cycle and overall expenditure, would impact on the commercial interests of the third party providers, the CCGs and NHS England itself.

It is felt that third party providers would be disadvantaged as information relating to their financial model/structure would be made available. Suppliers and providers compete with one another in a competitive environment and for contracts not just related to the CCGs and NHS England, to provide the price per cycle would allow rival companies to undercut our current providers as they would be able to work out the costs from the information provided.

The CCGs and NHS England would also be disadvantaged commercially as the release of this information could dissuade providers from bidding for services and would therefore impact upon the CCGs' and NHS England's ability to obtain best value for money in future procurement exercises.

As a result, it is in our opinion that this sufficiently demonstrates the prejudice which would be caused through disclosure.

We are also required to conduct the public interest test, which assesses whether releasing the information would be in the public interest despite the prejudice test being satisfied. It is important to bear in mind that any disclosure under the FOI Act is a disclosure to the public at large and not just to the applicant. We recognise that there is a general public interest in the CCGs being open and transparent. However, we do not believe that this public interest is served in disclosure for damage that would be caused as outlined above.

Therefore, we consider that releasing the number of cycles and price paid per cycle would not be in the public interest, as the public interest does not outweigh the prejudice as set out above.

**Notwithstanding the above, to assist you further I can confirm there have been in excess of 200 combined cycles for all procedures relating to the five CCGs with a total spend in excess of £650,000.**

Please see the below for information relating to tab three "Cancer and Fertility Treatment". This is applicable to all the CCGs:

<b>A. Do you routinely fund sperm banking for men prior to cancer treatment?</b>
Yes, for patients faced with infertility as a consequence of their treatment
<b>B. Do you routinely fund egg/embryo banking for women prior to cancer treatment?</b>
Yes, for patients faced with infertility as a consequence of their treatment
<b>C. Do you fund fertility preservation for medical reasons other than cancer?</b>
Yes, for patients faced with infertility as a consequence of their treatment
<b>D. Do you apply the same access criteria to fertility preservation as to IVF?</b>

No, please see below for cryopreservation of sperm, oocytes and embryos for policy:

Patients undergoing cancer treatments/chemotherapy  
Patients who have a disease or condition requiring a medical or surgical treatment that has a significant likelihood of making them infertile.

Couples who meet current eligibility criteria in which the male partner has a chronic viral infection where there is high risk of viral transmission to the female partner and potentially any unborn child (such as HIV or Hepatitis C).

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 CSU  
FOI Team, Room 18  
Scarsdale  
Newbold Road  
Chesterfield  
S41 7PF

Email [agcus.foi.norfolkwaveneyccgs@nhs.net](mailto:agcus.foi.norfolkwaveneyccgs@nhs.net)

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 CCG.

The Information Commissioner can be contacted at: Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone 0303 123 1113, email [casework@ico.org.uk](mailto:casework@ico.org.uk)

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Yours faithfully

Philip Humphreys

**FOI Manager, Arden & GEM CSU**

**On behalf of  
Great Yarmouth and Waveney,  
North Norfolk, South Norfolk  
Norwich and West Norfolk CCGs**