



Freedom of Information request & West Norfolk CCG response

WN-2016-00182 – Myalgic Encephalomyelitis

The period since January 2010 and break down the results by year.

1. How many people in the CCG are:

a) Diagnosed with myalgic encephalomyelitis/chronic fatigue syndrome (M.E.)?

The information requested is not held by the CCG. It is advised you refer your request to the CCG's local acute provider [The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust](#) who may hold the information you seek.

b) Estimated to have M.E.?

The information requested is not held by the CCG.

2. Are there specialist local services for people with M.E. commissioned within the CCG? If yes:

Yes

a) What services are commissioned?

Specialist Community Service; the team is made up of GP's with specialist interest and knowledge of ME/CFS (GPwSI) and specialist therapists including Occupational Therapists and Physiotherapists.

b) How much does it cost annually to run each service?

The CCG confirms that it holds the information requested but are withholding it under section 43(2) of the FOIA. Section 43 of the Act provides an exemption for information,

the disclosure of which would or would be likely to prejudice the commercial interests of any person (including the interests of a public authorities, such as CCGs).

The Information Commissioner's relevant guidance states that:

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services"

It is considered that the commercial interests of the providers would be likely to be prejudiced if we disclose the information requested, as the CCG are currently in the stages of ongoing negotiations for this contract. Disclosure of the withheld information may lead to speculation among bidders and undermine the CCG's ability to negotiate favourable rates during a sensitive stage of the process.

As this is a qualified exemption we must consider whether the public interest in withholding the information outweighs the public interest in disclosing it.

Factors in favour of disclosure of the information are as follows:

- 1. Furthering the understanding of and participation in the public debate of issues of the day.*
- 2. Promoting accountability and transparency by public authorities for decisions taken by them and in the spending of public money.*
- 3. Allowing individuals and companies to understand decisions made by public authorities affecting their lives.*

Factors in favour of non-disclosure are as follows:

- 1. There is a strong public interest in ensuring that the commercial interests of the companies providing the services are not prejudiced. If such prejudice occurs it would enable competitors to undercut the organisations when bidding for contracts of a similar nature.*
- 2. Disclosure of the withheld information into the public domain could decrease the differentiation between suppliers, as processes, practices and commercial offerings may become homogenised, thus endangering true and fair competition. This would further hinder the ability of suppliers to act competitively within the market. Internal processes that allow such suppliers to create and maintain a competitive advantage would be lost as they become public knowledge, creating unfair competition and stifling innovation and creativity.*
- 3. The withheld information relates to legitimate economic interests. Disclosure would reduce the CCG's capacity to negotiate future contracts. The release of further individual costs could compromise the CCG's ability to secure good value in their future discussions with contractors by creating market expectations in key rates and allowances.*

The CCG considers that there is a public interest in disclosure of the withheld information as it promotes openness and transparency around surrounding public spending within the NHS. However, equally, the CCG does not consider that it would be in the public interest to damage their suppliers' commercial position by disclosure.

On balance the CCG considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption in this case. Section 43(2) FOIA was therefore correctly applied to withhold the requested information.

3. What other local services are people with M.E. directed to after diagnosis?

Myalgic Encephalomyelitis Support Norfolk

4. Have people diagnosed with M.E. in the locality been referred to out-of-area specialist M.E. services? If any:

a) How many were referred?

NHS West Norfolk CCG made 73 referrals to East Coast Community Healthcare (ECCH) for the period April 2015 to March 2016:

b) What was the overall cost to the CCG for the out-of-area provision of specialist services for people with M.E.?

The CCG confirms that it holds the information requested but are withholding it under section 43(2) of the FOIA. Section 43 of the Act provides an exemption for information, the disclosure of which would or would be likely to prejudice the commercial interests of any person (including the interests of a public authorities, such as CCGs).

The Information Commissioner's relevant guidance states that:

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services"

It is considered that the commercial interests of the providers would be likely to be prejudiced if we disclose the information requested, as the CCG are currently in the stages of ongoing negotiations for this contract. Disclosure of the withheld information may lead to speculation among bidders and undermine the CCG's ability to negotiate favourable rates during a sensitive stage of the procurement process. Furthermore, by releasing the number of referrals and the total cost of the services it would be possible to calculate the unit cost per referral which would alert competitors of sensitive pricing strategies.

As this is a qualified exemption we must consider whether the public interest in withholding the information outweighs the public interest in disclosing it.

Factors in favour of disclosure of the information are as follows:

- 1. Furthering the understanding of and participation in the public debate of issues of the day.*
- 2. Promoting accountability and transparency by public authorities for decisions taken by them and in the spending of public money.*
- 3. Allowing individuals and companies to understand decisions made by public authorities affecting their lives.*

Factors in favour of non-disclosure are as follows:

- 1. There is a strong public interest in ensuring that the commercial interests of the companies providing the services are not prejudiced. If such prejudice occurs it*

would enable competitors to undercut the organisations when bidding for contracts of a similar nature.

2. Disclosure of the withheld information into the public domain could decrease the differentiation between suppliers, as processes, practices and commercial offerings may become homogenised, thus endangering true and fair competition. This would further hinder the ability of suppliers to act competitively within the market. Internal processes that allow such suppliers to create and maintain a competitive advantage would be lost as they become public knowledge, creating unfair competition and stifling innovation and creativity.
3. The withheld information relates to legitimate economic interests. Disclosure would reduce the CCG's capacity to negotiate future contracts. The release of further individual costs could compromise the CCG's ability to secure good value in their future discussions with contractors by creating market expectations in key rates and allowances.

The CCG considers that there is a public interest in disclosure of the withheld information as it promotes openness and transparency around surrounding public spending within the NHS. However, equally, the CCG does not consider that it would be in the public interest to damage their suppliers' commercial position by disclosure. Moreover, the CCG does not consider that it would be in the public interest to damage their suppliers' commercial position by disclosure of current commercially sensitive pricing information which would be relied upon by their competitors/bidders to obtain a commercial advantage in upcoming procurements.

On balance the CCG considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption in this case. Section 43(2) FOIA was therefore correctly applied to withhold the requested information.