

Our Ref: FOIDV1731\190312\LB

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Dave Orr
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25 April 2012

Dear Dave

Re: Request for information under Freedom of Information Act 2000

Thank you for your request under the Freedom of Information Act 2000, which was received on 19 March 2012. You requested the following information.

Have NHS Devon (Devon PCT) undertaken any research or reviewed public accountability, governance and transparency issues that arise when non-public bodies win a contract to provide publicly funded children's services? If so, please provide relevant documents.

Transforming Community Services is a Department of Health programme which required PCTs to divest themselves of their directly managed provider services by 1st April 2011. As part of this programme, it was agreed that Integrated Children's Services in Devon would be managed on behalf of NHS Devon by Devon County Council for an interim period of up to 2 years. This agreement was predicated on the re-commissioning of these services resulting in identification of the long term provider(s) of these services and safe transfer to new provider(s) by 31st March 2013.

Please see document titled "FOIDV1731_TCS_MOI" specifically page 27.

Does the children's services tender contain any details or requirements for equivalent public accountability, governance and transparency to that currently provided & available through the public bodies currently delivering services? If so, please provide details.

Will the winning organisation for the children's services tender be required to be a "public body", so that it falls within the FOI Act for openness and transparency?

Will the winning organisation for the children's services tender be required to hold meetings mostly in public (with only genuinely commercially confidential matters being reserved for a closed meeting)? Will papers and minutes be published publicly (with only genuinely commercially confidential matters being redacted)?

If the governance allows for elected Councillors or other Trust appointees to be Directors on the board of the organisation that wins the tender, then will they be able to report openly & publicly on matters of public service and interest? How would any conflict with Companies Act Director requirements for a private limited

company be dealt with?

The procurement process is still underway and there is no decision at this time on the new provider of the services.

The provider will not be required to be a public body. The overall responsibility for the provision of services will remain with the commissioning organisations which will remain public bodies and hold meetings in public; contract monitoring will lead to regular reports to the Boards of the respective commissioning organisations thus maintaining an appropriate level of public scrutiny.

Whichever provider is selected they will be subject to the legal requirements set out in the NHS Standard Contract. Clause 60.5 of section E of the national contract covers FOI and Transparency.

“The Provider must assist and co-operate to help the Commissioners fulfil their FOI obligations. This includes;

- The contract itself and any info the Providers hold for the Commissioners.
- Any exemption to FOI is a Commissioning decision not a provider one.
- Any FOIs received by the provider will be transferred to the Commissioner to answer within 2 days
- Only information classified as confidential by the FOI is exempt from FOI and the actual contractual agreement is not.
- If the contract is to be published the Commissioner does not have to obtain the providers permission.”

More information can be found by clicking on the following link;

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131988

There is no current expectation that Councillors or other Trust appointees will become Directors of the Board for the winning organisation; however, if the winning organisation makes such an offer in future, appropriate legal advice on potential conflicts of interest will be taken by the Commissioning bodies before accepting or declining the offer.

NHS Devon is committed to answering every request for information as fully as possible, and I hope that you are happy with this response, and that the information provided will be useful. If you have any further questions, please do not hesitate to contact our Freedom of Information team on 01392 205205 or foi.devonpct@nhs.net.

Yours sincerely

Nick Pearson

Head of Communications for the Cluster of NHS Devon Plymouth and Torbay

I recognise that you may be unhappy with the service you have received in relation to your request and that you may wish to make a complaint or request a review of our decision. If that is the case, please write to: The Assistant Director of Corporate Affairs, NHS Devon, Commissioning Headquarters, County Hall, Topsham Road, Exeter, EX2 4QL or email foi.devonpct@nhs.net.

If you are still unhappy following our internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the PCT internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, www.informationcommissioner.gov.uk. The Information Commissioner's address is: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.