

29 September 2022

Our ref: NIC-671586-K9D1T

7 and 8 Wellington Place
Leeds
West Yorkshire
LS1 4AP

Dear Sir/Madam,

Re: Information Request – Freedom of Information Act (FOIA) 2000

Thank you for your email dated 16 August 2022 requesting the following information:

“I wish to see full and unredacted copies of all contracts and subcontracts you hold with IPROOV LIMITED and IPROOV RESEARCH LIMITED.”

Please accept our sincere apologies for the delay in responding to your request.

NHS Digital holds the information that you have requested. Please find attached to this email a redacted copy of NHS Digital’s contract with iProov Limited. We do not hold copies of any subcontracts.

We have redacted some of the information contained within the contract under the following exemptions:

- Section 31(1)(a) – the prevention and detection of crime
- Section 40(2) – personal data
- Section 43(2) – commercially sensitive information

Section 31(1)(a)

Section 31(1)(a) sets out that information is exempt if its disclosure would or would be likely to prejudice the prevention and/or detection of crime. We are unable to provide a detailed description of the information which has been redacted, as to do so would itself reveal sensitive information. However, we can advise that we have redacted information which, if revealed, would provide would-be attackers with information which could be used to increase the likelihood of a successful cyber-attack against NHS Digital or its partners.

Section 31 is a qualified exemption. This means that NHS Digital is required to consider whether the public interest in the disclosure of the information outweighs the public interest in maintaining the exemption. NHS Digital is committed to making information available on an open and transparent basis. However, we have an obligation to ensure that the patient data with which we have been entrusted is protected from criminal, malicious or otherwise inappropriate access and use. To reveal information which could increase the likelihood of a cyber-attack being carried out against NHS Digital and/or its partners jeopardises the patient information we are responsible for. This risk is disproportionate to the generic public interest in the information you have requested.

As such, we conclude that the public interest is in favour of maintaining the exemption.

Section 40(2)

We have redacted personal information, including names, contact information and signatures under section 40(2) of the FOIA. Section 40(2) sets out that information is exempt if its disclosure would contravene the data protection principles; would contravene an objection to processing, or; the data is exempt from the right of subject access.

Data protection principle (a) sets out that “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject...”, on the basis that processing of information in this way would be unfair.

In the case of FOI requests, personal data is processed when it is disclosed in response to the request. Therefore, in order to disclose information to you, NHS Digital must demonstrate that doing so would be lawful, fair, and transparent. We must therefore consider each of these factors in turn.

Would disclosure be lawful?

The ICO set out that there are four elements to consider when examining whether disclosure of information would be lawful. We have looked at each of these in turn below.

- Is the information special category data?

‘Special category data’ is personal data about an individual’s race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes); health, sex life or sexual orientation.

The requested information does not meet the definition of special category data, and therefore we must consider the next element:

- Is the information criminal offence data?

Criminal offence data is information which relates to criminal convictions and offences or related security measures. The requested information is not criminal offence data, and therefore we must consider the next element:

- Is there any Article 6 lawful basis for processing the personal data?
 - Does lawful basis (a) – consent - apply?
 - Does lawful basis (f) - legitimate interests - apply?

In all circumstances, an organisation must have an Article 6 lawful basis for processing personal data. For the purposes of responding to FOIA requests, only basis (a) – consent and (f) – legitimate interests are relevant. We must therefore consider whether either basis applies to the requested information.

We do not have the consent of the relevant individuals to disclose their personal information in response to FOIA requests. As such, basis (a) – consent, does not apply.

As we cannot rely on basis (a), NHS Digital must consider whether there are any legitimate interests in the disclosure of this information under the FOIA. This is a three-part test:

- (i) Purpose: what is the legitimate interest in the disclosure of the information?
- (ii) Necessity: is disclosure necessary for that purpose?
- (iii) Balancing test: does the legitimate interest outweigh the interests and rights of the individual?

We recognise that disclosing the names (or other personal information which would reveal the names) of those individuals whose personal information appears within the contract would demonstrate transparency and accountability. We are therefore satisfied that the first part of the legitimate interests assessment is met.

However, revealing the redacted personal information would not help to advance an understanding of the nature of the contract. The names which have been removed (and the other contact information which would serve to indirectly reveal the names) are of individuals who serve as points of contact for the contract, not necessarily those who have ultimate responsibility for it. Furthermore, the detail of the contract which we are releasing provides a level of detail which itself demonstrates NHS Digital's commitment to openness, transparency, and accountability.

We therefore conclude that disclosure of the redacted personal information cannot be said to be necessary.

As disclosure is not necessary for the purposes of the identified legitimate interests, we cannot rely on basis (f). We therefore conclude that disclosure would not be lawful.

The information is therefore exempt from disclosure under section 40(2).

Section 43(2)

Section 43(2) sets out that information is exempt from disclosure if its release would or would be likely to prejudice the commercial interests of any party, including the organisation which holds the information.

We have redacted some information on the grounds that revealing it would be detrimental to the commercial interests of iProov Limited, by providing their commercial competitors with valuable information which could be used to jeopardise iProov's ability to participate in the commercial marketplace in which they operate. The information we have redacted relates to specific prices, volumes and service levels which would provide competitor organisations with an unfair insight into iProov's income. Disclosure would therefore clearly prejudice the commercial interests of iProov.

Section 43(2) is a qualified exemption. This means that even where we have demonstrated the prejudice which would be likely to occur as a result of disclosure, we are required to

consider whether there is an overwhelming public interest in the release of the information. We recognise that there is a legitimate public interest in demonstrating that the contracts NHS Digital holds with third-party organisations represent good value for money. However, releasing information which organisations expect to be treated in a confidential manner would be likely to irreparably damage NHS Digital's reputation, dissuading organisations from working with NHS Digital in future. We therefore consider that the public interest is in preserving NHS Digital's working relationships with those organisations. Doing so allows us to continue to deliver valuable, cost-efficient services to patients.

We are therefore satisfied that section 43(2) applies to the commercial information which has been redacted.

Conclusion

I trust you are satisfied with our response to your request for information. However, if you are not satisfied, you may request a review from a suitably qualified member of staff not involved in the initial query, via the enquiries@nhsdigital.nhs.uk email address or by post at the above postal address.

If following an internal review, you remain unsatisfied with the way in which we have handled your request you are entitled to ask the Information Commissioner to assess whether we have complied with our obligations under FOIA by writing to them at the following address:

Information Commissioner's Office
Wycliffe House Water Lane
Wilmslow
Cheshire SK9 5AF
Email: icocasework@ico.org.uk

NHS Digital values customer feedback and would appreciate a moment of your time to respond to our [Freedom of Information \(FOI\) Survey](#) to let us know about your experience.

Yours faithfully,

Information Governance Adviser