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Web: [www.derbyandderbyshireicb.nhs.uk](file:///%5C%5CDC-SYS-FIL-C011.systems.informatix.loc%5CDCC%5CCorporate%5CCommunications%20%26%20Engagement%5CTeam%5CStaff%5CMark%20Stuart%5CAssets%20for%20Adding%5CICB%20Templates%5CICB%20New%5Cwww.derbyandderbyshireicb.nhs.uk)

Date: 6 February 2023

**FREEDOM OF INFORMATION – DECISION NOTICE**

Dear Sir / Madam,

**FOI Reference Number: 1741**

I refer to your email of 9 January 2023 requesting information in respect of GP practice information.

I can confirm on behalf of Derby and Derbyshire Integrated Care Board (DDICB), 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:

I have contacted the NHS to help me with my query regarding GP Surgeries. They sent me to a link which shows a lot of information the NHS holds but not what quite what I need. They suggested I contact each individual ICB for the actual information, that you hold in your geographical area. I would like to request the following information.

1. Which surgeries are Doctor owned

2. Receive Notional Rent

3. Notional Rent Review dates.

**Our response:**

I can confirm that we hold this information. However, it is our opinion that this information is exempt from disclosure pursuant to section 43(2) of the Freedom of Information Act 2000. This section relates to information that is exempt from disclosure that could have a detrimental effect on the commercial interests of “…any person”. Derby and Derbyshire ICB consider that at this time the commercial interests of the ICB, third parties and overall the NHS could be detrimentally impacted upon.

As this section is a qualified exemption, we are obliged to apply the public interest test as below:

**Public Interest Test**

It is recognised that the disclosure of the requested information may assist in providing transparency and a better understanding of the NHS's transactions with third parties and may provide assistance with regards to knowledge of the use of public funds by the NHS.

Conversely to the factors demonstrated above in favour of disclosure, it is felt that the ICB and the NHS in general could be disadvantaged should the information sought be made available to the general public through FOI.

GP practices receive rent for the property in which they are housed from the NHS. The ICB understands that businesses exist to offer a support service to GP practices that wish to challenge the NHS, through the District Valuer, on rental valuation for their properties with a view to increasing the amount the practices receive in rent from the NHS. Such businesses include prospective buyers, landlords and chartered surveyors within what NHS England has categorised as the ‘challenging valuations’ sector. Such challenges have real and significant commercial consequences for the NHS. Disclosing information about which practices are GP-owned and when practices' rent review is due would allow the District Valuer to be challenged more easily. Challenges can be raised for both GP-owned and leasehold premises, but it is easier to challenge a valuation of GP-owned premises because no lease is involved. Based on the number of comparisons that could be provided by the businesses challenging practices' rent, the District Valuer would be pushed to his or her upper limits of valuations. More challenges would go to the litigation authority; this would put the NHS at a commercial disadvantage through having to pay higher rents to GP practices (both GP-owned and leased) and through being involved in more litigations. This would jeopardise the NHS’s ability to negotiate rents fairly and competitively and provide robust and effective services in the future and would result in increased costs to the NHS in both time and money.

Therefore we feel this demonstrates that there is a real and significant risk of prejudice to the NHS’s commercial interests if the requested information was to be disclosed, and the release of this information would not be in the public interest.

We believe this stance is supported within a decision notice issued by the ICO regarding a similar request. The ICO upheld the decision to engage section 43; a copy of the notice can be seen at the following link:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259564/fs50717561.pdf>

**Balance Test:**

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. It is recognised that there is a general public interest in the ICB being open and transparent. However, as above, it is not believed that this public interest is served in disclosure for damage that would be caused as outlined above.

Therefore the ICB consider that releasing this information would not be in the public interest as the public interest does not outweigh the prejudice as set out above.

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:

NHS Derby and Derbyshire ICB
FOI Team

First Floor

Cardinal Square

10 Nottingham Road

Derby

DE1 3QT

Or:

ddicb.foi@nhs.net

If you are not content with the outcome of our review, 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 by the ICB.

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.

Yours faithfully,

**Kathryn Jacklin**

**FOI Officer**

**Derby and Derbyshire Integrated Care Board**

*All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the* [*Open Government Licence*](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/) *(OGL) a request to re-use is not required, but the licence conditions must be met. You must not re-use any previously unreleased information without having the consent from the ICB. Should you wish to re-use previously unreleased information then you must make your request in writing (email will suffice) to the FOI Lead via**ddicb.foi@nhs.net**. All requests for re-use will be responded to within 20 working days of receipt.*