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Request for Information Reference: 06.21.08

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Email only

31 August 2021

## **Freedom of Information Act 2000 – Request for Information**

Thank you for submitting your queries on 21 July 2021 further to our response to your original Freedom of Information request. Your request has been processed under the provisions of the Freedom of Information Act 2000 and I am now able to provide you with a response.

Your original request was in relation to pagers/ bleeps and in our response below we have included the original question with our response for reference, followed by your query and our further response.

**Under the FOI Act, please provide the following information, with "pagers" used as a synonym for "bleeps":**

### **Original Question 2**

**For the financial year ending 31 March 2021, what is the total annualised cost of pagers (broken down by equipment rental, licences, low value equipment replacement, maintenance of infrastructure, depreciation on capital assets and any other costs)?**

### **Original Trust response:**

We are unable to provide the information as requested on the grounds that this information is commercially sensitive and has, therefore, been withheld pursuant to Section 43 of the Act.

Section 43 (2) exempts from disclosure the following:

(2) Information, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person including those of the public authority holding the information.

Our supplier has made clear representation that pricing for the equipment rental, licences, low value equipment replacement, maintenance of infrastructure, depreciation on capital assets and any other costs is commercially sensitive information. The disclosure of this information would be likely to prejudice the

supplier's commercial interests, as it would provide alternative bidders with an understanding of their costs (which would not be reciprocated) with respect to similar contracts in the NHS. This would undermine the supplier's ability to tender, on fair and equal terms, for such contracts. The Trust considers that there is potential for such harm to arise with reasonable proximity and, therefore, that the exemption under Section 43(2) of the Act is engaged.

The Trust acknowledges the public interest in publication of the information; specifically the interest in transparency with respect to expenditure on services, as a means of assisting the taxpayer in evaluating their value for money. However, there is a competing public interest in preserving fair market competition and the ability of public authorities to obtain value for money when sourcing services. In previous rulings the Information Commissioner has made clear that the Freedom of Information Act is not intended to distort fair market competition. In this case, the Trust therefore considers that the public interest in preserving fair competition outweighs the general public interest in transparency and is therefore applying the exemption under Section 43(2).

**Enquirer query:**

**The Trust has claimed S.43(2) exemptions for commercial sensitivity in response to Questions 2 and 7. As a counter to that:**

- a) the contract has already been let, so the Trust would merely be providing historical financial data;**
- b) there is no active procurement exercise, so disclosure would not be prejudicial to negotiations;**
- c) contracts over £25k are, in any case, subject to your publication scheme;**
- d) transparency clauses, including compliance with primary legislation such as FOIA 2000, should be built into your contracts; and**
- e) if the Trust still considers disclosure of disaggregated costs to be prejudicial, it could still elect to provide the aggregate (total) data for these items, without the breakdown of costs. This would be in line with the Trust's s.16 duty to provide advice and assistance to the requestor in order to enable as complete fulfilment of the request as possible.**

**Trust response to query:**

In respect of these costs the Trust is unable to provide the information. Further to consultation with the provider they have advised that the pricing structure in use with the Trust is current and they believe that the disclosure of this would be likely to impact their ability to fairly compete for current or future tenders as it would provide information to competitors on their pricing structure which would not be reciprocated. As part of this consultation with the provider the Trust did enquire whether a banded figure could be used, to enable the Trust to provide some information without endangering the commercial interests of the provider, however the provider advised that this would still enable an inference of costs as it would fall into any organisation discounting parameters and an average cost point would be able to be determined.

Section 43(2) of the Act states that information is exempt if its disclosure under the FOIA would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding it).

The Trust has undertaken a public interest test in order to understand the impact of disclosing this information against withholding the information requested. It has determined that if the information was disclosed then the provider's competitive position would be likely to be eroded and market would be less competitive, with the result that the public benefit of having an efficient competitive market would be to some extent eroded. A waiver is currently in place until 2024 in the event pagers/bleeps are not replaced by December 2021.

As such we are refusing this part of your request.

In respect of your query regarding the Trust Contract Register, while some opportunities are published on the Contracts Finder a framework may be utilised on occasions. All contract awards will be published on the Contracts Finder. The supplier in question is currently engaged following a waiver and as such are not contracted under an official contract and therefore has not been added to the contract register.

**Original Question 4.**

**If a contract has been awarded, which pager replacement system has your Trust selected?**

**Original Trust response:**

Multitone Electronics

**Enquirer Query:**

By way of clarification of the response to Question 4, which specific Multitone system is being used at present?

**Trust response to query:**

Multitone Electronics - version number 1.6.3.0001 and the system name is Multitone I-message.

**Original Question 10**

**Is the Trust on course to phase out pagers for \*non-emergency\* communications by 31 December 2021? If not, by when?**

**Original Trust response:**

There is a plan in place to deliver this by the end of December 2021.

**Enquirer Query:**

In response to Question 10, the Trust states that there is a plan in place to replace pagers/bleeps by 31 Dec 2021. This seems at odds with the response to Question 4,

where no active pilot or procurement seems to be happening. Please clarify the situation and how the Trust will meet the deadline.

**Trust response to query:**

The Trust can confirm that there is a plan in place to deliver this by the end of December 2021. However, a waiver is currently in place until 2024 in the event pagers/ bleeps are not replaced by December 2021.

In line with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log on the Trust's website. However please be assured that we anonymise all responses prior to adding them to the disclosure log.

I hope that this response has provided you with the information you had requested. If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me by telephone or in writing. If however, you are dissatisfied with the way in which your request has been handled and would like an internal review, you will need to contact me in writing at the above address or via [cdda-tr.cddftfoi@nhs](mailto:cdda-tr.cddftfoi@nhs).

If you remain dissatisfied with our response following an internal review you have the right to appeal to The Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. More information is available on their website; [www.ico.gov.uk](http://www.ico.gov.uk).

Yours sincerely

**Corporate Records and Freedom of Information Facilitator**