



National Audit Office

The UK's independent public spending  
watchdog

Switchboard +44 (0)207 798 7000

Direct Line +44 (0)207 798 7264

Email [FOI@nao.org.uk](mailto:FOI@nao.org.uk)

Reference FOI-1692

Date 29 February 2024

Dear

## NEW HOSPITAL IN KING'S LYNN

Thank you for your request of 2 February 2024 for discussions between the National Audit Office and NHS England about proposals for a new hospital in King's Lynn. Your request has been considered under the terms of the Freedom of Information Act 2000 (FOIA).

The FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. Whilst we hold a small amount of information within the scope of your request, we consider it to be exempt from disclosure under **Section 33** (public audit functions) of the FOIA.

Your original request has been reproduced in **Annex A** for your reference, along with our response. **Annex B** provides a full explanation of the Section 33 exemption, how it applies to your request and our consideration of the public interest test.

I am sorry we are not able to share the information you requested on this occasion. **Annex C** sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under FOIA.

Yours sincerely,

NAO FOI Team

## **Annex A**

### **Request for information about a new hospital in King's Lynn:**

*"thank you for forwarding [NAO Director's] conclusions on the QEH business plan and I appreciate the work done in investigating my concerns.*

*I would like to make an FOI request for full disclosure on the "discussions with NHS England staff about the venture"*

### **NAO response:**

We have searched our records and can confirm that we hold information falling within the scope of your request but consider this information exempt from disclosure. The following exemptions apply: Section 33 (public audit functions). Please see **Annex B** for details of this exemption.

## **Annex B**

### **This annex sets out the exemption that we have applied to your request.**

#### **Section 33 Freedom of Information Act 2000 – Public Audit**

Section 33 provides that:

(1) *This section applies to any public authority which has functions in relation to -*

*(a) the audit of the accounts of other public authorities, or*

*(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.*

(2) *Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).*

### **Reasons why we have applied the section 33 exemption:**

We have applied the section 33 exemption to information we hold in scope of your request, namely a very small number of emails and note of an interview with an NHS England official.

This information was generated as we reviewed concerns regarding the value for money proposals for a new hospital in King's Lynn, and we believe that disclosing these interactions under FOIA would prejudice our access to such information in the future.

An effective, efficient audit is supported through an open and constructive approach between the NAO and the audited body. As such it is critically important that we have a safe space to gather information and knowledge and can engage in a free and frank way with audited bodies. The release of this information would remove this safe space – precipitating a backdrop of increased challenge and procedure around requests for audit information. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, escalation of issues and increased audit costs.

Section 17(3) of the Budget Responsibility and National Audit Act 2011 places a duty on the C&AG to "aim to carry out functions effectively and cost effectively". Given the above factors, we consider that our disclosure of the information requested would be at odds with this statutory requirement – it would serve to undermine the effectiveness and increase the cost of the C&AG's public audit functions.

For the reasons set out above, we consider it appropriate to apply the public audit exemption available under Section 33(2) of the FOIA.

### **Reasons why the public interest in maintaining the exemption outweighs the public interest in disclosing the information in this case:**

The C&AG and the NAO are independent of government and scrutinise public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources.

We recognise there is a public interest in knowing the use of public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function. However, we consider the disclosure of the information we have withheld would be likely to reduce the effectiveness of the audit process for the reasons set out above.

In this instance we reviewed concerns raised with us regarding proposals for a new hospital in King's Lynn within the context of the C&AG's public audit remit and shared our findings in public correspondence.

The NAO's work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings in public. Consequently, given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption.

## **Annex C**

### **Statement of Policy**

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at [FOI@nao.org.uk](mailto:FOI@nao.org.uk) or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP

The FOI and Correspondence Manager will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The primary way of escalating your concerns to the Information Commissioner is at: [www.ico.org.uk/foicomplaints](http://www.ico.org.uk/foicomplaints)

Alternatively you can contact the ICO at <https://ico.org.uk/> or Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF.