

**Information Governance**

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5 December 2023

**Our reference: FOI DA4850b**

I am responding to your request for information received 29 November 2023. This has been treated as a request under the Freedom of Information Act 2000.

I am now enclosing a response which is attached to the end of this letter. Please do not hesitate to contact me on the contact details above if you have any further queries.

Yours sincerely,



Keshia Harvey  
Senior Information Governance Manager - Compliance

If you are dissatisfied with the Trust's response to your FOIA request then you should contact us and we will arrange for an internal review of this decision.

If you remain dissatisfied with the decision following our response to your complaint, you may write to the Information Commissioner for a decision under Section 50 of the Freedom of Information Act 2000. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 0303 123 1113  
Web: [www.ico.org.uk](http://www.ico.org.uk)

**Please note that the data supplied is not allowed to be re-used and/or published without the explicit consent of East London NHS Foundation Trust. Please contact the signatory to request permission if this is your intention**



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**Interim Chief Executive Officer:** Lorraine Sunduza  
**Chair:** Eileen Taylor

**Request:** Please can the Trust point out specifically which elements of my request are considered to prejudice its commercial interests.

**My request does not include for the divulgence of what the suppliers have provided and therefore no commercial advantage could be lost/gained without knowing what was invoiced and in what quantities.**

**I believe it is possible to strike a balance between protecting the Trust's commercial interests and upholding the principles of transparency and accountability embodied in the FOIA.**

**Answer:** The Trust has reviewed your request and reiterates that it is of the view that there is a potential commercial detriment in disclosing this information. There is a risk that the Trust stands to lose financially due to the potential of late payment claims which may be generated through the disclosure of this information. This would have a significant impact on the Trust's financial resources. Furthermore, it may discourage some companies from providing services to the Trust in future. This would have an adverse effect on the provision of core support services within the Trust and may result either in the loss of specialised companies able to provide cost effective, robust services, or in an increase in prices.

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**Request DA4850a: The Trust has refused my request based on exemption under the FOIA 2000;**

**Section 12 (exceedance of the appropriate cost limit).**

**I appreciate that fulfilling my request may be challenging, however you have provided little to no advice or assistance as to how my request may be refined to bring it within the cost limit.**

**Considering the Trust's response, I am open to narrowing down the scope of my request however, I would appreciate specific advice and guidance from you on how to refine the request to ensure compliance within the cost limitations.**

**I am willing to exclude the following fields to make the request more manageable for the Trust:**

- **The total amount of interest liability due to late payment of the invoice.**
- **The total amount of interest paid to the supplier due to late payment of the invoice.**

**So that I may refine my request further, please can you advise:**

**Question 1: What period of time could be provided based on the request in its current form (excluding the two fields above)?**

**Answer:** Following your request for a review of the Trust's previous response to you, the Trust has reconsidered its original response.

It is now of the view that Section 43 of the Freedom of Information Act 2000 applies. Section 43(2) is a prejudice-based exemption which says that information is exempt if its disclosure under the Freedom of Information Act would or would be likely to prejudice the commercial interests of any legal person (including the public authority holding it). As this is a qualified exemption the public interest in withholding the information should outweigh the public interest in disclosure.

The Trust has applied the public interest test. In this instance it is of the view that there is potential commercial detriment in disclosing this information. There is a risk that the Trust stands to lose financially due to the potential of late payment claims which may be generated through the disclosure of this information. This would have a significant impact on the Trust's financial resources. Furthermore, it may discourage some companies from providing services to the Trust in future. This would have an adverse effect on the provision of core support services within the Trust and may result either in the loss of specialised companies able to provide cost effective, robust services, or in an increase in prices.

For these reasons your request is being refused. However, in the Trust's previous response it directed you to data contained in its annual reports relating to the Better Payment Practice Code. This provides a summary of the data you are seeking.

Nonetheless, in an effort to be helpful, as the 2022 – 23 accounts have not yet been published, draft BPPC data for the financial year 2022 – 23 is listed below. I hope this is helpful to you.



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<b>Note 19 Better Payment Practice Code - measure of compliance</b>		
	<b>2022/23 - Number</b>	<b>2022/23 - £000</b>
Total Non-NHS trade invoices paid in the year	66,356	278,681
Total Non-NHS trade invoices paid within target	56,436	251,254
Percentage of Non-NHS trade invoices paid within target	85.1%	90.2%
Total NHS trade invoices paid in the year	1,736	73,112
Total NHS trade invoices paid within target	1,355	65,280
Percentage of NHS trade invoices paid within target	78.1%	89.3%
Total NHS trade invoices paid in the year	1,994	71,038
Total NHS trade invoices paid within target	1,575	60,560
Percentage of NHS trade invoices paid within target	79.0%	85.3%
	<b>2021/22 - Number</b>	<b>2021/22 - £000</b>
Total Non-NHS trade invoices paid in the year	64,487	235,528
Total Non-NHS trade invoices paid within target	53,314	208,177
Percentage of Non-NHS trade invoices paid within target	82.7%	88.4%

The Better Payment Practice Code requires the Trust to aim to pay all undisputed invoices by the due date or within 30 days of receipt of goods or a valid invoice, whichever is later.

**Question 2: Are any particular data points disproportionately affecting the time to produce? If so, which ones? If these were removed, what time period would then be available?**

Ultimately, I would like as big a time frame of data as possible with the maximum data fields, but as per my request I did note these were on as 'as available' basis.

**In short, what data points can be supplied and for what time period? So that it may help your assessment, my preference order is:**

- a) More data points
- b) More recent time periods

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**Original Request DA4850:**

**I am writing to you under the Freedom of Information Act 2000 to request information from East London NHS Foundation Trust.**

**Question 1: A list of non-NHS trade invoices that were not paid within 30 days for the last 6 financial years (2017/18 to 2022/23 inclusive), which would feed into the Regulation 113 Notice you are required to publish each year as part of your obligations under The Public Contracts Regulations 2015, with the following information for each invoice (where available):**

- a) The name of the Supplier.**
- b) Supplier email address.**
- c) Supplier company registration number.**
- d) Supplier postal address.**
- e) Supplier telephone number.**
- f) Supplier website.**
- g) The date of the invoice.**
- h) The invoice reference.**
- i) The gross value of the Invoice.**
- j) The date the invoice should have been paid by.**
- k) The actual payment date of the invoice.**
- l) The total amount of interest liability due to late payment of the invoice.**
- m) The total amount of interest paid to the supplier due to late payment of the invoice.**

**Answer:** Section 12(1) of the Freedom of Information Act 2000 states:

Section 12(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit

When the Trust identifies that the request is likely to take over 18 hours, we are not obliged to provide information for any part of the request. We are required to provide advice on how you may refine your request to information that can be collated within the 18 hour timeframe. You may then choose what information you would like to receive and confirm the same to us, upon which we will process your request.

The Trust has reviewed your request for information and informs you that Invoices can be delayed for payment for a number of reasons; submission delays by the vendor, problems with supplier invoices and disputes over charges. Because of this the calculation of interest charges owed need to be undertaken with the individual vendor.

The rate of interest potentially chargeable is calculated by reference to the Bank of England base rate at the time the invoice becomes overdue, so that figure needs to be reviewed for every invoice where it is agreed that the delay was the fault of the Trust.

In order to collate this information, staff would have to scrutinise each invoice individually, determine and agree the cause of delayed payment with the vendor, then calculate the interest rate that should be applied. This would take staff over the 18-hour cost limit as there may be several thousand invoices each year.

In an effort to be helpful, we refer you to summaries of information that are available in the Annual Accounts. These show the total invoices paid, those paid within target and the percentage of those invoices paid within target.





Section 21(1) of the FOI Act states:

*(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

The information requested is accessible here:

Financial year 2021/22 - (page 213)

<https://www.elft.nhs.uk/sites/default/files/2022-10/East%20London%20NHSFT%20Annual%20Report%20and%20Accounts%202021-2022%20FINAL%20%28for%20publication%29.pdf>

Financial year 2020/21 (page 187)

[https://www.elft.nhs.uk/sites/default/files/2022-01/ELFT%20Annual%20Report%20and%20Accounts%202020-2021\\_0.pdf](https://www.elft.nhs.uk/sites/default/files/2022-01/ELFT%20Annual%20Report%20and%20Accounts%202020-2021_0.pdf)

Financial year 2019/20 (page 148)

<https://www.elft.nhs.uk/sites/default/files/2022-01/ELFT%20Annual%20Report%20and%20Accounts%202019-2020.pdf>

Financial year 2018/19 (page 242)

<https://www.elft.nhs.uk/sites/default/files/2022-01/ELFT%20Annual%20Report%20and%20Accounts%202018-19.pdf>

Financial year 2017/18 (page 206)

<https://www.elft.nhs.uk/sites/default/files/2022-01/ELFT%20Annual%20Report%20and%20Accounts%202017-%202018.pdf>

Please note – the Annual Report for financial year 2022/23 is currently being audited and is due to be published in December. The Trust is therefore unable to provide data for this period at the current time.



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