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| <b>Reference:</b>       | FOI.12590.23     |
| <b>Subject:</b>         | Dental contracts |
| <b>Date of Request:</b> | 5 September 2023 |

**Requested:**

1. Total amount of "clawback" from dental care providers undertaking NHS work
2. The number of providers who are being asked to return funds
3. The financial amount per provider

**Response:**

Hywel Dda University Health Board (UHB) considers that Section 43 of the Freedom of Information Act (FoIA) applies to the requested information for question 3, as answering would be prejudicial to commercial interests. Section 43(2) exempts information, where disclosure would or would be likely to prejudice the commercial interests of any company. Commercial interests may be prejudiced where disclosure would, or would be likely to:

- Weaken a company's position in a competitive environment by revealing market sensitive information or information of potential usefulness to its competitors
- Damage a company's business reputation or the confidence that customers/users, suppliers or investors may have in it.

This exemption is qualified; therefore, even if information falls within Section 43, public authorities must then apply the public interest test set out in Section 2(2)(b).

The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

The UHB has therefore considered the following:

**In favour of disclosure:** There is a public interest in transparency and in the accountability of public funds. Furthermore, it is in the public's interest that public funds be used effectively and that public sector bodies obtain the best value for money when contracting for the provision of services. Private sector bodies engaging in commercial activities with the public sector must expect some information about those activities to be disclosed.

**Against Disclosure:** Disclosure of the information being requested, when used in conjunction with other information accessible within the public domain, could result in the calculation of an individual Dental Practice's contract value. It is not within the expectation of the Dental Practices that their individual contract details would be released into the public domain, and this in turn could impact negatively on the UHB's relationship with the practices, thus affecting our service delivery.

**Decision:** - The UHB has considered that releasing the information under the FoIA, to which the UHB is subject, would impede upon the UHB's relationship with the contracted practices, as it could allow for the calculation of individual contract details. The UHB believes that there is wider established public interest in companies not being prejudiced merely because they have

contracted with a public sector body, and that there is a public interest in protecting its relationship with its contracted partners.

Therefore, the public interest in withholding the contract information is greater than the interests in disclosing it and thereby giving unfair commercial advantage to competitors of the contractors to which this information concerns.

However, whilst operating in accordance with the Section 45 Freedom of Information Code of Practice, the UHB has a duty to provide advice and assistance. Therefore, the UHB provides the information for questions 1 and 2 below.

1. The UHB confirms that final recoveries have not yet been agreed with all NHS dental contract holders who did not meet their contract metrics during the 2022/23 financial year. However, as at 15 September 2023, the UHB has agreed the recovery of £1,730.926 relating to the 2022/23 financial year.
2. The UHB confirms that, as at 15 September 2023, nineteen (19) NHS Dental Contracts have agreed recoveries for the 2022/23 financial year.