

UK Parliamentarians Seek FOIA Changes To Force Private Sector Suppliers To Disclose NHS Contract Details

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A cross-party group of UK Members of Parliament (“MPs”) is seeking to amend the UK’s ‘freedom of information’ regime under the [Freedom of Information Act 2000](#) (“FOIA”) to also cover current and prospective private sector suppliers to the National Health Service (“NHS”) in England and Wales.

The [Freedom of Information \(Amendment\) Bill \(HC Bill 84\)](#) (the “Bill”) was introduced in the House of Commons on September 1, 2014, and was first published on October 28, 2014. It was submitted by Labour MP Grahame Morris, with the support of a cross-party group of MPs from the Labour, Liberal Democrat, Conservative and Green parties.

If the Bill is enacted, it would place current and prospective suppliers of services to the NHS under significant transparency obligations in relation to:

- bids, contracts, and service performance for the NHS in England and Wales, and
- penalties relating to healthcare services imposed on the company, its officers, employees, affiliates or partners during the past five years, anywhere in the world.

This post provides a high-level look at these proposals.

Public’s right to request documents from current and prospective private sector NHS suppliers

The Bill seeks to extend the scope of FOIA to include any person who provides, has provided, or has submitted a bid to provide NHS services under a contract with an NHS body.

Under the proposed amendments to FOIA, any such person will be required to respond to public requests for information, subject to certain exceptions including prejudice to commercial interests, where such information relates to:

- (a) that person’s contract with, or bid submitted to, an NHS body;

- (b) matters affecting its ability to provide services in accordance with that contract; and
- (c) its performance of that contract.

Proactive disclosure of documents relating to penalties imposed in relation to the provision of healthcare services

Under the Bill, private healthcare companies or bodies seeking health service contracts will also be required to proactively disclose details of any penalty imposed upon the company, its affiliates, commercial partners, officers, or employees, in relation to the provision of healthcare services during the previous five years, whether or not the services were provided, or the penalty was imposed, in the UK.

This obligation would include any penalty imposed by a court, by a regulatory body, or under the terms of a contract.

Next steps

As the Bill is currently drafted, the amendments would come into force on September 1, 2015.

The Bill is [scheduled](#) for its second reading in the House of Commons on January 9, 2015. As a “Private Member’s Bill”, it faces being “talked out” (filibustered) in the absence of government support, and thus running out of debating time in the current parliamentary session. Due to the impending UK election, such an outcome seems likely. Even so, the Bill might then be revived in the next Parliament, and/or motivate copy-cat efforts in other countries.

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