

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2023

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information from NHS England about a briefing for the Chief Medical Officer which was prepared as a result of the Covid 19 tixagevimab/cilgavimab (Evusheld) pre-exposure prophylaxis National Expert Group Meeting of 26 April 2022. By the date of this notice, NHS England had not issued a substantive response to this request.
2. The Commissioner's decision is that NHS England has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires NHS England to take the following step to ensure compliance with the legislation.
 - NHS England must provide a substantive response to the request in accordance with its obligations under FOIA.
4. NHS England must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 January 2023, the complainant wrote to NHS England and requested information in the following terms:

"Dear NHS England,

In the briefing for the Chief Medical Officer (CMO) which was prepared as the result of the COVID-19 tixagevimab/cilgavimab (Evusheld) pre-exposure prophylaxis National Expert Group Meeting of 26 April 2022 there are three conclusions

Conclusion 2 was that "The group noted the unmet need of the immunocompromised patients outlined by the IAG and proposed the expeditious establishment of a platform trial to support evidence generation in this group of patients at highest risk within the current UK pandemic context. The group recommended that the study design be future-proofed to enable the addition of other PrEP (or therapeutic) agents to the study and be applicable to other new (sub)variants as they emerge"

Please provide the response (whether by memorandum, email or noted conversation) of the CMO to the report.

Please note that this request would have been directed to NHS Improvement prior to its merger into NHS England in July 2022."

6. NHS England acknowledged the request on the same day. To date, a substantive response has not been issued.

Reasons for decision

7. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

8. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
9. On 23 March 2023 the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 5 working days.

10. Despite this intervention, NHS England has failed to respond to the complainant.
11. From the evidence provided to the Commissioner in this case, it is clear that NHS England did not deal with the request for information in accordance with FOIA. The Commissioner finds that NHS England has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

12. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
14. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
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