

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2023

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

Decision (including any steps ordered)

1. The complainant requested information about communications between the Chief Medical Officer and the Scientific Advisor Group for Emergencies on the use of prophylaxis treatments including Evusheld. 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 2 March 2023, the complainant wrote to NHS England and requested information in the following terms:

"Communications between the Chief Medical Officer and the Scientific Advisory Group for Emergencies on the use of prophylaxis treatments including Evusheld

Please provide all email communications between the Chief Medical Officer and the Scientific Advisory Group for Emergencies (i.e. if SAGE have or had an email account, or failing that emails sent or received by individuals acting on behalf of or in the capacity of being a member of SAGE who would communicate on its behalf) on the use of prophylaxis treatments, including Evusheld, between 1 January and 30 April 2022.

Please search for the terms "prophylaxis", "Prophylactic" and "Evusheld".

6. NHS England acknowledged the request on 6 March 2023. 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 5 April 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 10 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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Water Lane
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