

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 the reports and data which were provided to the Covid 19 tixagevimab/cilgavimab (Evusheld) pre-exposure prophylaxis National Expert Group Meeting of 26 April 2022.
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

On 21 January 2023, the complainant wrote to NHS England and requested information in the following terms:

"Dear NHS England,

A briefing for the Chief Medical Officer (CMO) was prepared as the result of the COVID-19 tixagevimab/cilgavimab (Evusheld) pre-exposure prophylaxis National Expert Group Meeting of 19 May. This briefing which is dated 25 May 2022 states (on page 2, item 1, bullet 4) that

“There were concerns that high-risk groups may modify their behaviour to less risk avoidant after taking a prophylactic agent - with particular implications is such an agent is of limited effectiveness”

Please provide the behavioural analysis reports, related data and/or other information provided to this meeting (or to the person(s) presenting this information to the meeting) to explain/support the concern above.

Please include any NHS hospitalisation data forecasts if these were included as part of this consideration.”

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

Reasons for decision

6. 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.”

7. 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”.
8. 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.
9. Despite this intervention, NHS England has failed to respond to the complainant.
10. 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

11. 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

12. 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.
13. 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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF