

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 April 2024

Public Authority: NHS Lancashire and South Cumbria
Integrated Care Board

Address: Level 3, Christ Church Precinct
County Hall
Fishergate Hill
Preston
PR1 8XB

Decision (including any steps ordered)

1. The complainant has requested information relating to ear syringing services. Lancashire and South Cumbria Integrated Care Board (“the public authority”) explained that it didn’t hold the requested information.
2. The Commissioner’s decision is that, on the balance of probabilities, the public authority doesn’t hold the requested information and therefore has complied with section 1 (general right of access to information) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. In September 2020, the complainant made a request under FOIA about ear syringing services. The request was not answered, due to the public authority’s efforts to combat the covid-19 pandemic. This is not the request that is the subject of this notice.

5. Then, on 19 May 2023, the complainant wrote to the public authority and requested information in the following terms:

“The covid-19 pandemic is officially over. What plans are there now for public consultation for this temporary change or is it now permanent and if so how and what consultation was entered into. Have you now conducted an EIA.

If none of the above have happened are you able to now give a timescale?”
6. On 22 May 2023 the public authority asked for clarification as to which Integrated Care Board the request related to. The complainant confirmed on the same day that they were interested in Lancashire and South Cumbria Integrated Care Board.
7. The public authority responded to the request on 22 June 2023. It denied holding the requested information.
8. The complainant requested an internal review on 17 July 2023, expressing concern that ‘you have failed to respond to my query about where and how this treatment can now be received and how this decision to remove it from the GP contract was reached and what consultation was undertaken.’
9. Following an internal review the public authority wrote to the complainant on 22 December 2023 and upheld its previous position.

Scope of the case

10. The complainant contacted the Commissioner on 27 November 2023 to complain about the way their request for information had been handled. The complainant is concerned that the public authority have been ‘unable to furnish me with any information or respond meaningfully to my request.’
11. The Commissioner hasn’t seen the request that the complainant made during the pandemic. In any case, the Commissioner wouldn’t investigate the public authority’s handling of this request, because there has been an undue delay¹ in this matter being brought to his attention. However, from the information available to him, the Commissioner knows this request relates to ear syringing services.

¹ [Our service standards | ICO](#)

12. The Commissioner considers that the scope of his investigation is to determine whether the public authority is correct when it says, in relation to the request of 19 May 2023, it doesn't hold the requested information.

Reasons for decision

Section 1 – general right of access to information

13. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.

14. In order to make his determination, the Commissioner has considered the grounds of complaint and the public authority's position as to why no relevant information is held.

15. In its refusal notice, the public authority explained to the complainant that:

"The Integrated Care Board (the public authority) do not have access to this information as this was removed from GP Contracts from legacy organisations within the Primary Care Trust."

16. In its refusal notice, it further explained:

"We can confirm that the ICB has not made a specific commissioning decision to change the inherited arrangements for the provision of ear syringing services, however, as the national contract with GP practices does not specify that they must provide ear syringing services, they will have individually decided whether to provide.

There is no contractual requirement for practices to notify the ICB of any changes to the provision of this service."

17. From this the Commissioner understands:

- The public authority, which is the Integrated Care Board for Lancashire and South Cumbria and responsible for GPs in the area doesn't specify whether specific GPs have to provide ear syringing services;
- It is up to the GP to determine whether it should provide ear syringing services;

- GPs don't need to inform the public authority whether they decide to provide ear syringing services or not.
18. To reiterate, the public authority is the Integrated Care Board for Lancashire and South Cumbria which means it has overall responsibility to ensure GPs are operating efficiently in the area. It has confirmed to the complainant that it doesn't mandate a specific treatment plan for blocked ears, and how to treat patients with this condition is entirely down to the individual GPs.
 19. It isn't for the Commissioner to determine whether the public authority **should** hold the requested information or whether its policies relating to ear syringing services are correct. It's for the Commissioner to determine whether the requested information is held.
 20. The public authority has explained to the complainant that Integrated Care Boards inherited the arrangement (or more accurately, lack of arrangement) about ear syringing services from the Clinical Commissioning Groups when ICBs replaced CCGs on 1 July 2022. In turn, CCGs replaced Primary Care Trusts and the decision to remove ear syringing from GP contracts came during the time of Primary Care Trusts.
 21. Whether or not the complainant agrees with this, since neither CCGs or ICBs had a specific procedure in relation to ear syringing services, and the current national contract between ICBs and GPs doesn't specify whether this service must be provided, it follows that it doesn't hold the requested information.
 22. For clarity, the public authority has confirmed that "no specific decision" was made to change access to ear syringing services, because it's the same arrangement as it was under the CCGs. If the way that the complainant has been able to access this service has been changed, this appears to have happened at a practice level.
 23. Since the decision to offer ear syringing services happens at GP level, and has done for some time, it follows that there won't be a consultation about this or an equality impact assessment; however the Commissioner notes it would have been helpful for the public authority to confirm this explicitly to the complainant.
 24. The public authority has directed the complainant to its Directory of Services,² the database of NHS Services in the UK, should they wish to

² [Directory of Services \(DoS\) - NHS England Digital](#)

direct their query to the relevant GP. The GP would be the relevant body to hold the information, since it's a decision made at GP level.

25. On the balance of probabilities, the Commissioner is satisfied that the public authority doesn't hold the requested information. The Commissioner requires no further steps.

Other matters

26. According to the Commissioner's guidance, a public authority should provide the outcome to its internal review within 20 working days of the review request, or 40 working days in exceptional circumstances. The public authority exceeded this timescale in this instance.

Right of appeal

27. 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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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