

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2024

Public Authority: NHS England (NHSE)
Address: PO Box 16738, Redditch, B97 9PT

Decision (including any steps ordered)

1. The complainant has requested NHSE to disclose information relating to Distance Selling Pharmacies (DSPs). They require a list of data to see how far the prescriber is from each DSP in West Yorkshire. NHSE responded, advising the complainant that it does not hold the requested information.
2. The Commissioner's decision is that on the balance of probabilities NHSE does not hold the requested information. NHSE breached section 10 of FOIA by failing to respond to the request within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 14 April 2021, the complainant wrote to NHSE and requested information in the following terms:

"I am looking to gather data on DSP's modus operandi as they have been around for some time now.

What data is collected to see how far the prescriber is from each DSP (mean mode median values)?

Please list data for each DSP in West Yorkshire.

Please note some of this data is available from Pharmdata so it must be collated.”

5. NHSE responded on 24 November 2023. It stated that it does not hold the requested information. It referred to a response it issued on 27 June 2022, in which it addressed this request (made amongst others) and said the information is not held.
6. The complainant requested an internal review on 25 November 2023. They stated that they do not believe NHSE does not hold the data and shared a link to where it could find it. They also said that NHSE has other tools available to it to help locate the data and it has a duty to respond appropriately to this request.
7. NHSE carried out an internal review and notified the complainant of its findings on 28 November 2023. It stated again that it does not hold the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 28 November 2023 to complain about the way their request for information had been handled. They believe NHSE does hold the requested information. They said the local Integrated Care Board (ICB) (which is part of NHSE) has supplied data separately that proves that the data exists and is accessible to NHSE. They also referred to a meeting they attended in which the requested information was presented.
9. The Commissioner considers that the scope of his investigation is to establish whether or not, on the balance of probabilities, NHSE holds the requested information.
10. It is important to point out now that the Commissioner can only consider the circumstances at the time of the request in April 2021. He cannot consider the circumstances or anything that post-dates the date of the request.

Reasons for decision

Section 1 – general right of access

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.

12. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
13. NHSE confirmed that it has interpreted the complainant's request as asking for the following:
 - For each Distance Selling Pharmacy in the West Yorkshire region, what data is collected to see how far the prescriber is from each Distance Selling Pharmacy. The results should be displayed as a mean, a mode and median values.
14. It has conducted searches in both its National Primary Care (NPC) team and within the North East and Yorkshire (NEY) regional team. The NPC team collected information on the number of DSPs there are within England and this information has already been disclosed to the complainant under their previous FOIA request. It said that the NPC team does not collect any further level of breakdown on how far each prescriber is located from each DSP.
15. It explained how colleagues within the NEY regional primary care team have confirmed that they do not do any locally specific (e.g. West Yorkshire) assurance of DSPs in the way the complainant has outlined in their request. Nor did the NEY regional team collect this data at the point in time this information request was received.
16. NHSE confirmed that given this request is asking for information relating to DSPs, the most likely place within the organisation to hold this information (if indeed it is) would be its primary care teams. It has conducted searches both within its national and regional primary care teams and confirmed that this information is not held by NHSE.
17. NHSE stated that from 1 April 2023, integrated care boards (ICBs) took on delegated responsibility for commissioning pharmacy, general ophthalmic, and dental (POD) services from NHSE. Colleagues within the NEY regional primary care team who were responsible for this area of work at the time of the request have since moved to the ICB as part of POD delegation. NHSE currently has no staff in the NEY regional primary care team who has the corporate knowledge on the subject.
18. It confirmed that for the purposes of this investigation, it has contacted colleagues who are now employed by the ICB about this request. They have advised that in 2021 when the request was received, NHSE's NEY regional primary care team did not have any locally developed DSP

assurance processes in place which were over and above the requirements of the NHS England Pharmacy Manual¹.

19. With regards to the complainant's reference to a colleague presenting the data at a meeting, NHSE confirmed that this took place after the information request was received and responded to. Having spoken to ICB colleagues it believes that the meeting referenced was a meeting that took place in November 2023.
20. In respect of the complainant's reference to SHAPE, NHSE explained that this is an online, interactive, data mapping, analysis and insight tool that supports service planning and estates strategy development. This service is supported by the Department of Health and Social Care (DHSC). The information within it is not held by NHSE. SHAPE uses information is provided by NHS Business Services Authority (NHSBSA) and is supported by DHSC.
21. NHSE advised that it does not have the ability to manipulate the data held by SHAPE unless it is downloaded on its systems. It explained that there are various datasets available on SHAPE (e.g. GP Practice data, Quality and Outcomes Framework (QCF) data, prescribing data and so forth). It confirmed again that NHSE does not have any business reason or requirement to access the particular information being requested, as the NEY regional primary care team has confirmed that it did not do any locally specific (e.g. West Yorkshire) assurance of DSPs in the way the complainant has outlined in this request in April 2021.
22. It explained further that its NPC team did not collate the data requested, as the data would not have enabled it to instigate any national programme of work to ensure that DSPs meet their terms of service based on such data.
23. NHSE said the requirement is for a DSP to provide:

“the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services”.
24. It confirmed that it would be data on who has requested the service from a DSP that would enable an assurance programme to work to ensure that DSPs are meeting this requirement of their terms of service not the data requested in this request. NHSE stated that the NCP team would not then have collated the data requested as it is not necessary

¹ [Pharmacy Manual \(england.nhs.uk\)](https://www.england.nhs.uk/pharmacy-manual/)

for any of its purposes. It commented that while the data may be interesting to some, it had and has no practical purpose or business need to collate this data for its NCP team.

25. For the above reasons, it maintains with confidence that NHSE does not hold the requested information. It has however directed the complainant to the public authorities or organisations that may.
26. The Commissioner is of the view that NHSE has explained in detail why it does not hold the requested information and why it had no practical purpose or business need to hold it at the time of the request. This remains the case now.
27. Since the timing of the request, POS services have transferred over to the ICB and an ICB is a separate public authority in its own right, with separate FOI responsibilities. The meeting the complainant referred to is an ICB meeting that took place in November 2023, sometime after the information request was made. The complainant should make an information request to the relevant ICB for the requested information.
28. In terms of SHAPE, NHSE has explained how it had access to this database but is not responsible for it or indeed party to the data behind it. It can manipulate data from SHAPE but it would first have to download that information onto its own systems to undertake that sort of analysis. NHSE has explained how it had and has no business need to do this and so has not at any time downloaded the relevant data and carried out the requested analysis. It therefore does not hold it.
29. There is no requirement under FOIA to create new information or obtain information from another source or legal entity in order to comply with a request. A public authority only needs to consider what recorded information it holds, if any. NHSE has confirmed that it does not hold the requested information and explained in detail why not. The Commissioner has no reason to doubt the validity of NHSE's submissions.
30. Therefore, on the balance of probabilities, for the reasons outlined above, the Commissioner has concluded that NHSE does not hold the requested information.

Procedural matters

31. Section 10 of FOIA requires a public authority to respond to information requests within 20 working days of receipt. NHSE failed to do this on this occasion and so the Commissioner has recorded a breach of section 10 in this case.

Other matters

32. The Commissioner notes the substantial delay in responding to this request (although NHSE has now said that it responded to another request made by the complainant in which this same request was made in 2022). He issued a Practice Recommendation last year to address ongoing concerns he had with NHSE and its FOIA compliance. This can be found here:

[fpr0987667.pdf \(ico.org.uk\)](#)

Right of appeal

33. 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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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