

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 June 2024

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

#### **Decision (including any steps ordered)**

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1. The Commissioner's decision is that, on the balance of probabilities, NHS England (NHSE) doesn't hold the requested information about Droxidopa and has complied with section 1(1)(a) and 10(1) of FOIA.
2. It's not necessary for NHSE to take any steps.

#### **Request and response**

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3. On 23 December 2023, the complainant submitted a nine-part request to NHSE about the drug Droxidopa. This covered how it's imported, its licencing and approval, usage, patient eligibility, patient access in life-threatening situations, guidelines and protocols, safety, public access to information and future considerations.
4. In its response to the request on 11 January 2024 NHSE confirmed it doesn't hold the requested information. It explained that NHSE isn't the same as 'the NHS in England' and that the NHS in England isn't a single organisation but is made up of a range of bodies.
5. NHSE directed the complainant to bodies that publishes or might hold relevant information, namely NHS Business Services Authority (NHSBSA), National Institute for Health and Care Excellence (NICE) or Medicines and Healthcare products Regulatory Agency (MHRA).

6. The complainant requested an internal review on 6 February 2024. They said that because their questions related to the use of Droxidopa in the health care system, they considered that “the NHS” is the appropriate body. The complainant said that the other organisations that NHSE had referred to aren’t relevant to their specific questions. They had therefore interpreted NHSE’s response as a refusal to provide them with the information they’ve requested, which they said is against the law.
7. NHSE provided an internal review on 15 March 2024. It again advised the complainant that “the NHS” isn’t one single body but is made up of different bodies of which NHSE is only one. NHSE confirmed that it isn’t responsible for how Droxidopa is managed and so doesn’t hold the information the complainant has requested. NHSE again directed the complainant to NHSBSA, NICE and MHRA.
8. On considering their complaint, the Commissioner advised the complainant that, in his view, NHSE would understand its functions and would be clear on whether it held the requested information about Droxidopa. As such the Commissioner advised the complainant that he was prepared to accept that NHSE doesn’t hold any relevant information and he invited the complainant to withdraw their complaint. He also advised that, in order to receive the information that they’re seeking without any further delay, the complainant should contact the bodies to which NHSE had referred. The complainant didn’t accept the Commissioner’s assessment and preferred to conclude their complaint formally, through a decision notice.

## Reasons for decision

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9. This reasoning covers whether, on the balance of probabilities, NHSE holds the information the complainant has requested.
10. FOIA doesn’t concern information that an applicant considers a public authority **should** hold. FOIA concerns solely recorded information that a public authority holds at the time of a request. Under section 1(1)(a) of FOIA a public authority must confirm whether it holds information an applicant has requested and under section 10(1), the authority must do this promptly and within 20 working days of the request.
11. In their initial complaint to the Commissioner, the complainant said that they had also sent their questions to MHRA. MHRA had answered some but not all of the questions and therefore “the NHS” is failing to answer their questions.

12. As NHSE had explained to the complainant, “the NHS” isn’t one single body – it’s a system that’s made up of many different organisations. One or more of these organisations may hold information about Droxidopa that the complainant’s seeking. NHSE is one body that makes up the NHS and it has confirmed that it doesn’t hold this information. NHSE’s role is to oversee the budget, planning, delivery and day-to-day operation of the commissioning side of the National Health Service in England<sup>1</sup>. In view of NHSE’s role the Commissioner sees no reason to doubt that it doesn’t hold the requested information, which is detailed information about one specific drug.
13. On the basis of NHSE’s correspondence to the complainant and the role that NHSE has, the Commissioner is satisfied, on the balance of probabilities, that NHSE doesn’t hold the information the complainant has requested and has complied with section 1(1)(a) and 10(1) of FOIA.
14. The complainant first requested the information from NHSE in December 2023 and they’ve also requested it from MHRA. If they haven’t already done so, the Commissioner again advises the complainant to also contact NHSBSA or NICE or both, for the information they’re seeking.

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<sup>1</sup> <https://www.england.nhs.uk/about/what-we-do/>

## Right of appeal

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15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**