

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 02 May 2017

**Public Authority:** Blackpool Clinical Commissioning Group  
**Address:** NHS Midlands and Lancashire CSU  
Jubilee House  
Lancashire Business Park  
Leyland, PR26 6TR

#### Decision (including any steps ordered)

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1. The complainant requested information about the prescribing of Co-proxamol. The Blackpool Clinical Commissioning Group (the CCG) confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that the CCG does not hold any further information in this case. The Commissioner does not require the CCG to take any steps.

#### Request and response

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2. On 18 April 2016 the complainant requested the following items of information:

*'I have searched 'Blackpool CCG for 'Request to prescribe Co-proxamol outside of local policy,' unfortunately no results appeared.*

*Many other CCG's do recognise and accept that there may be some exceptional patients who may require medication or appliances outside of local policy. e.g. 'Black or Grey listed products'. I would be grateful if you could supply the following information: -*

1. *Does Blackpool CCG operate a process for requesting approval to continue prescribing Black or Grey drugs?*
2. *Re: - <http://www.lancsmmg.nhs.uk/medicines/co-proxamol/> under the heading 'Background' you state 'Withdrawn from the UK market because of safety concerns.' "The CSM has stated that there is no identifiable patient group in whom the risk: benefit of co-proxamol*

*may be positive." Did you arrive at your decision on the grounds of the 2004 CSM recommendations which were seriously outdated by 2015?*

*3. Could you supply the following: - A copy of the minutes from any meetings held leading to your decision of a 'Do Not Prescribe Classification' for Co-proxamol?*

*4. A copy of all the information you reviewed and considered prior to making the decision to stop prescribing Co-proxamol.*

*5. The occupations of all persons who were involved in making this decision.*

*6. The results of any voting which may have taken place in arriving at your decision.'*

3. On 26 April 2016 the CCG provided responses to the questions. Q1- the CCG did not operate a process. Q2- the decision was originally made in 2004 and the MHRA has not reinstated the licence for the product. Qs 3, 4, 5 and 6 - the CCG does not hold this information; it was prior to the establishment of the CCG.
4. There followed correspondence between the complainant and the CCG.
5. The complainant raised a number of points about the response and referred to examples of why he thought the MHRA decision was wrong, and questioned why another CCG in the Lancashire Medicines Management Group (LMMG) was still prescribing painkillers from the 'black' list.
6. The Blackpool CCG stated that it was unable to resolve the individual concerns through the FOI process and suggested that if he wished to pursue the matter, he had the right to make a formal complaint or to see his GP for a discussion on his personal clinical circumstances.
7. The complainant requested an internal review on 13 October 2016 as he argued that the information requested relates to the period October 2014 to November 2015 when the LMMG minutes reviewed prescription drugs and was not therefore prior to the establishment of CCG.
8. The CCG sent him the outcome of its internal review on 2 December 2016 and confirmed that it does not hold some of the information requested:

*'Co-proxamol was circulated with a covering paper and was not highlighted as needing a change of RAG status i.e. it would remain as black. Therefore, no specific comments were made relating to it in the minutes, which are on the LMMG website. The December minutes highlight only those drugs that CCGs wished to review. There has not been any further review of Co-proxamol.'*

## Scope of the case

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9. On 22 November the complainant wrote to the Commissioner to complain about the way his request has been handled.
10. The Commissioner is aware that the complainant has made other FOIA requests to this and a number of other public authorities concerning the status/costs of this drug. He has also been given advice on how to pursue any personal clinical circumstances.
11. Therefore, the Commissioner has considered that the scope of this case is whether section 1 of FOIA was applied correctly by the Blackpool CCG to this request only.

## Reasons for decision

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12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. As is the practice in a case such as this, the Commissioner asked the CCG a number of questions to confirm/establish if further information is held.
16. In response to the Commissioner's questions, the CCG confirmed that it did not hold any further recorded information falling within the scope of the request.
  - NHS Blackpool CCG was established in April 2013. Any handover / legacy documents relating to the PCT were forwarded to the Department of Health's Legacy team.

- There was an extensive manual search of the minutes and agendas in which black listed drugs included Co-Proxamol were discussed.
- NHS Blackpool CCG has an up to date Information Governance policy that covers records destruction. There are no records prior to April 2013 held by the CCG. Minutes of meetings and any decisions will be held since this time within the Medicines Management Team based in Midlands and Lancashire Commissioning Support Unit (MLCSU). These documents (9 October 2014 LMMG minutes, 2014 RAG list harmonisation and RAG harmonisation work) have been shared with the complainant.

17. The CCG explained that

- the CCG since its establishment in 2013 has not made any new decisions or communications on the issuing of Co-proxamol other than to confirm the drug (along with many others) is still on the MHRA black list and remains unlicensed. The CCG does not have any role in individual patient prescribing; we develop guidance and protocols based on reviewed evidence. Each GP is able to assess the individual's medical/ clinical grounds for each patient need and any exceptionality. [redacted name] has also been advised to contact the MHRA directly, as he remains concerned about the general withdrawal of licencing of Co-proxamol.

18. Having considered the CCG's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the CCG does not hold any further recorded information within the scope of the request.

19. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.

20. As the Commissioner's decision is that the information is not held, the Commissioner does not require the CCG to take any steps.

## Right of appeal

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21. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**