

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2021

Public Authority: NHS Business Services Authority

Address: Stella House
Goldcrest Way
Newburn Riverside
Newcastle upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant has requested information about Prozac and brand name medication subscriptions. NHS Business Services Authority (NHSBSA) released some information and in the course of the Commissioner's investigation released more information within scope of the request. The complainant considers further relevant information is held.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, NHSBSA has released to the complainant all the relevant information it holds and has complied with section 1(1) of the FOIA.
 - NHSBSA breached section 10(1) of the FOIA as it did not respond to the request or communicate the held information to the complainant within 20 working days.
3. The Commissioner does not require NHSBSA to take any remedial steps.

Request and response

4. On 31 August 2020 the complainant wrote to NHSBSA and requested information in the following terms:

"2. I have been not been able to find any evidence online that suggests Eli Lilly and Company has stopped manufacturing Prozac. I would be most grateful if you could furnish me with any documentation that either indicates that a Clinical Commissioning Group (CCG) directive was the reason for the withdrawal of Prozac, or alternatively, confirms that Eli Lilly and Company has ceased its manufacture.

3. I would like to know if any individual in England is still being prescribed the brand named drug Prozac (as produced by Eli Lilly and Company).

4. I would like to know, if, for any purpose at all, any individual in England is being prescribed a specific brand named medication, as opposed to its generic substitute. If there are such cases, I would be most grateful if you would provide me with the names of the medications and numbers of individuals taking the drug concerned."

5. Following the Commissioner's intervention, NHSBSA provided a response to the request on 1 March 2021. It said it had advised the complainant on 28 October 2020 that Clinical Commissioning Groups (CCGs) decide the rules on local prescribing and that each CCG is a separate public authority. NHSBSA advised the complainant that the NHS is not one large organisation, and that each CCG is a distinct public authority under the terms of the FOIA. With regard to questions 3 and 4 of the request, NHSBSA released information advising that the released data did not tell it if patients were still being prescribed the drug's referred to but, rather, the information told it how many patients were prescribed Prozac/other proprietary drugs in one particular month alone.
6. The complainant requested an internal review on 12 March 2021 and NHSBSA provided one on 13 April 2021. It confirmed that each CCG and other NHS bodies were separate public authorities under the FOIA. NHSBSA advised that it was satisfied that it was not obliged to transfer the complainant's request to each of the 39 CCGs and addressed other points he had raised.
7. On 14 April 2021 NHSBSA provided the complainant with a list of the CCGs.

8. As a result of his complaint to the Commissioner, on 23 June 2021 NHSBSA provided the complainant with a fresh response to Q2 of his request, specifically the element "... or alternatively, confirm that Eli Lilly and Company has ceased its manufacture". NHSBSA released to the complainant other information it had identified it holds; namely summary data concerning communication about Prozac's national availability being discontinued by Eli Lilly and Company (rather than Prozac's manufacture being ceased). NHSBSA confirmed that it does not hold any other relevant information and explained why it does not.

Scope of the case

9. The complainant contacted the Commissioner on 2 October 2020 to complain about the way his request for information had been handled. In his complaint, the complainant explained that NHS England had advised him to contact NHSBSA for the information he is seeking. The complainant considers that NHS England and NHSBSA are different departments of one organisation – "the NHS". He says that it is "not right or fair" of the NHS to pass him around to different departments.
10. NHSBSA had explained to the complainant that for the purposes of the FOIA, the NHS is not one big organisation. The Commissioner also explained to the complainant that NHSBSA and NHS England are two separate bodies. The complainant had submitted his request to NHSBSA, NHSBSA responded to it and that is the correspondence that the complainant submitted to support his complaint. NHSBSA is therefore the body that is the focus of this investigation. The complainant continues to disagree with the Commissioner on that point and considers that his complaint is against NHS England. However the Commissioner is entirely satisfied that her position is correct.
11. Following NHSBSA's fresh response of 23 June 2021 the Commissioner wrote to the complainant to advise him that, in her view, NHSBSA does not hold any further relevant information. The complainant confirmed that he was not prepared to withdraw his complaint and so it will conclude through this decision notice.
12. The Commissioner has considered whether, on the balance of probabilities, NHSBSA holds further information that is relevant to the complainant's request. She has also considered the timeliness of NHSBSA's response.

Reasons for decision

Section 1 – right of access to information held by public authorities

13. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
14. NHSBSA provided the Commissioner with its submission on 23 June 2021. With regard to the element of the request for information on Prozac's ceased "manufacture", NHSBSA confirmed that, using the search term "Prozac" it has searched its system which holds notifications from pharmaceutical companies on the status of medicinal products. It has also consulted the staff responsible for maintaining the system, by email. Those staff provided the summary data that has been released to the complainant. NHSBSA has told the Commissioner that this is all the information falling broadly within the scope of this element of the request that it holds.
15. With regard to the remaining elements of the request, NHSBSA has confirmed that NHSBA has:
 - no statutory function to hold relevant data
 - no system or manual process designed to hold this data; and
 - no role in the organisation that requires this data to be held.
16. NHSBSA says it has asked the relevant NHSBSA clinicians if any information is held. These are Pharmacists and the Head of Clinical Services (a GP). In addition, it asked the Information Services team that interacts with CCGs and other prescribing advisors in supporting systems that those prescribing advisors use. NHSBSA has advised that many of the staff have been in post for 10+ years and were surprised to be asked such a question as it is widely known that it does not hold this data, it would only be held locally by the CCGs.
17. NHSBSA has confirmed it is an Arms Length Body of the Department of Health and Social Care (DHSC). As such it is a "creature of statute" and can only perform functions given to it by the DHSC / Secretary of State for Health and Social Care. These are detailed at <https://www.nhsbsa.nhs.uk/our-policies/governance-framework>

18. NHSBSA has confirmed that it does not have any public function to provide advice on prescribing including, in the case of this request, whether the specified proprietary drug Prozac should be prescribed to patients.
19. NHSBSA has released to the complainant some information that is relevant to his request. The Commissioner considers that the searches for further relevant information that NHSBSA has carried out were appropriate, and that the appropriate individuals have been approached about the request. She is also satisfied with the explanation that NHSBSA has given about its role and why it would not hold any other relevant information. Having considered all the circumstances the Commissioner has decided that, on the balance of probabilities, NHSBSA holds no further relevant information and has now complied with section 1(1) of the FOIA.

Section 10 – time for compliance

20. Under section 10(1) of the FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
21. The complainant submitted his request to NHSBSA on 31 August 2020. NHSBSA did not respond to it until 1 March 2021; significantly outside the 20 working day requirement. NHSBSA subsequently communicated further information to the complainant on 23 June 2021. The Commissioner therefore finds that NHSBSA's response to the request breached section 10(1) of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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

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