

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2021

Public Authority: NHS Blackpool Clinical Commissioning Group
Address: The Stadium
Seasiders Way
Blackpool
FY1 6JX

Decision (including any steps ordered)

1. The complainant has requested information about the prescribing of Co-proxamol and the handling of FOIA requests. NHS Blackpool Clinical Commissioning Group ('the CCG') addressed the complainant's questions but the complainant considers that the CCG holds relevant, recorded information with regard to four parts of his request.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the CCG holds no recorded information within scope of parts 2 and 3 of the complainant's request and has complied with section 1(1)(a) of the FOIA.
 - Parts 7 and 8 of the request are not valid requests for information under section 8(1) of the FOIA and the CCG is not obliged to respond to those parts.
3. The Commissioner does not require the CCG to take any remedial steps.

Request and response

4. On 24 June 2020 the complainant wrote to the CCG and requested information in the following terms:

“1) *Did Blackpool CCG liaise with MLCSU as suggested in the Copy Email? (Attached)

2) Why has '[Redacted] Medical Centre' been allowed to continue prescribing 13 years after the ban began without any sanctions or repercussions?

3) Why was my GP made aware that sanctions would be imposed if he prescribed Co-proxamol without an IFR being granted?

4) Regarding the IFR request form, "annual treatment cost was stated to be £7,800.00" where did this figure come from? You can clearly see from the appendix below that Co-proxamol was available from chemist.net for just 45 pence per tablet. Annual treatment cost if purchased from chemist.net would have been just £604.80 @ 4 tablets per day and £1209.60 for the maximum dose @8 tablets per day!

5) Please state what due diligence was implemented when sourcing the price of Co-proxamol.

6) Why has Blackpool CCG / MLCSU never challenged the lies and misinformation distributed by MHRA, and the two (CIC) organisations PrescQipp, and NHSCC who can't be held to account by the general public?

7) Why did Blackpool CCG / MLSCU deliberately mislead me and the ICO Decision notice Dated 02 May 2017 [Attachment Page 6]

8) Why does MLCSU continue to use deplorable tactics in order to avoid responding to FOI REVIEWS? [* *See Below]”

5. The CCG responded on 27 August 2020. It addressed Q1, Q3-Q5 and Q7-8. The CCG advised the complainant that it had addressed Q2 in previous correspondence to him of 24 January 2020 and that it considered Q6 to be a request for an opinion and, as such, not covered by FOIA.

6. The complainant requested an internal review on 2 September 2020 with regard to the CCG's response to Q2, Q3, Q4, Q7 and Q6 of his request.

7. Following an internal review the CCG wrote to the complainant on 18 September 2020 as follows:
 - The CCG provided general advice on Q2.
 - It advised it was unable to comment on statement made by complainant's GP with regard to Q3.
 - It advised that it considered Q4 to be a new request that it would handle separately.
 - With regard to Q7 the CCG advised the complainant to submit a subject access request for particular information.
 - With regard to Q8 the CCG confirmed internal reviews had been carried out and advised the complainant on the internal review process.

Scope of the case

8. The complainant contacted the Commissioner on 7 December 2020 to complain about the way his request for information had been handled.
9. Having liaised with the complainant, the Commissioner's investigation has focussed on whether, on the balance of probabilities, the CCG holds recorded information within scope of parts 2 and 3 of his request. And with regard to those parts, the Commissioner asked the complaint to explain what relevant, recorded information he expected the CCG to hold.
10. The Commissioner has also considered whether parts 7 and 8 of the request can be categorised as valid requests for information under FOIA.

Reasons for decision

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

11. 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 him or her if it is held and is not exempt information.
12. Part 2 of the complainant's request is as follows:

"2) Why has '[Redacted] Medical Centre' been allowed to continue prescribing 13 years after the ban began without any sanctions or repercussions?"

13. In the Commissioner's view, this part of the request is framed very much as a request for an explanation rather than a request for recorded information. In correspondence to her about this part, the complainant explained that he was expecting to receive the advice the CCG gave to those GPs continuing to prescribe the drug Co-proxamol and the GPs' responses. This would include material sent to the complainant's previous GP advising them to stop prescribing that drug. The Commissioner notes this explanation but does not consider that the complainant has described such information clearly in the question he put to the CCG.
14. The CCG has introduced its submission to the Commissioner by providing a background to the request. It says it has received several requests for information about Co-proxamol from the complainant since 2016. The CCG says it has answered those requests and carried out appropriate internal review of its responses to them.
15. Regarding the current request, the CCG considers it has provided the complainant with all the information it can. Requests about sanctions imposed on GPs have also been answered in response to previous requests from the complainant and associated internal reviews. In those responses the complainant had been advised that the CCG does not impose sanctions on GP practices that are prescribing Co-Proxamol; that matter is down to clinical judgment and patient need.
16. Moving on to discuss part 2 of the current request specifically, the CCG notes that in its original response to this part it had advised the complainant that information which would address this question had been included in its response of 24 January 2020 to a previous request. In that response the CCG had advised that it does not impose sanctions on GPs prescribing Co-proxamol. It said that all practices are discontinuing prescribing Co-proxamol to patients still taking this unlicensed medicine and doing so in line with NHS Guidance. The CCG had explained that it can take time to assess individuals' pain management and switch them to an alternative pain management regime. That is why there is still limited prescribing of that drug at present, with the prescribing of it monitored and discussed with the practices in question on a regular basis.
17. The CCG considers that the response to the earlier request addresses part 2 of the current request and the Commissioner agrees. She has noted the information the complaint was expecting to receive in response to his question. However, to address under FOIA the question as framed, the Commissioner considers that the CCG would have to hold information that recorded why a specific GP practice has been "allowed" to continue prescribing Co-proxamol.

18. The CCG has explained why GP practices, including the complainant's former practice, continue to prescribe Co-proxamol and that it does not impose sanctions against GP practices prescribing that drug. The CCG's position is that it does not hold any relevant, recorded information and the Commissioner accepts that. In so far as the question can be categorised as a request for recorded information under FOIA, the Commissioner finds that, on the balance of probabilities, the CCG does not hold relevant information, including any correspondence to the specific practice in question, advising it to stop prescribing Co-proxamol.
19. Part 3 of the complainant's request is as follows:

"3) Why was my GP made aware that sanctions would be imposed if he prescribed Co-proxamol without an IFR being granted?"
20. Again, in the Commissioner's view, this part of the request is framed as a request for an explanation rather than a request for recorded information. In his correspondence to her about this part, the complainant explained that he was expecting to receive communications to GP practices about prescribing Co-proxamol to 'Named Patients'. The Commissioner notes this but, again, does not consider that the complainant has described that information clearly in the question he put to the CCG.
21. In its submission to her, the CCG notes that in its original response to this part it had advised the complainant that the CCG does not impose sanctions on GPs for prescribing medications. It explained that the 'Red Amber Green (RAG)' list is there as a guide, and it is down to GP practices' own professional judgement to follow guidance. (The RAG list provides guidance around the initiation of medicines in primary and secondary care.) The CCG has confirmed that it is satisfied with that response.
22. In so far as part 3 can be categorised as a request for recorded information under FOIA, the Commissioner finds that the CCG does not hold any information relevant to that question. She has noted the information the complaint was expecting to receive in response to his question but, to address under FOIA the question as framed, the Commissioner considers that the CCG would have to hold information that recorded why the CCG made a specific GP practice aware that sanctions would be imposed in particular circumstances.
23. The CCG has explained that it does not impose such sanctions. It would therefore not hold recorded information relevant to part 3, including any that the complainant has now described, and the Commissioner finds that, on the balance of probabilities, the CCG does not hold information within scope of part 3 of the request.

Section 8 – request for information

24. Under section 8(1) of the FOIA, a valid request for information is one that: is in writing, states the applicants name and address for correspondence and describes the information requested.
25. Parts 7 and 8 of the complainant's request are as follows:
 - "7) Why did Blackpool CCG / MLSCU deliberately mislead me and the ICO Decision notice Dated 02 May 2017 [Attachment Page 6]
 - 8) Why does MLCSU continue to use deplorable tactics in order to avoid responding to FOI REVIEWS? [* *See Below]"
26. In his correspondence to her about these parts, the complainant explained that he was expecting to receive first, material that documents the CCG's reasoning for not taking seriously his correspondence about a quite separate request that resulted in a separate decision by the Commissioner. With regard to part 8, the complainant says he was expecting the CCG to provide the number of times it had used a particular letter format to refuse to carry out internal reviews.
27. In the Commissioner's view, however, not only are these parts of the request again framed more as requests for explanation or opinion, but they are also qualified questions. By this the Commissioner means that if it was to handle these parts under the FOIA, the CCG would have to consider whether it held information about it "deliberately" misleading the ICO about a particular matter and its use of "deplorable" tactics with regard to its handling of internal reviews.
28. The FOIA does not require a public authority to decide whether it has "misled the ICO" or whether it uses "deplorable tactics." As such, the Commissioner finds that part 7 and 8 of the request are not valid requests for recorded information under section 8(1) of the FOIA and the CCG is not obliged to comply with those parts

Other matters

29. The Commissioner reminds the complainant that the FOIA solely concerns information that a public authority holds in recorded form. The FOIA does not require an authority to answer queries, give opinions or explanations. However, as discussed in the notice, the parts of the complainant's request are framed more as general questions or requests for an explanation from the CCG. What constitutes a valid request for information under the FOIA has been explained above.
30. The Commissioner has published guidance for applicants on how to word a request in order to get the best result¹. The complainant may find this guidance helpful if he wants to submit an FOIA request in the future.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

31. 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

32. 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.
33. 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