

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2024

Public Authority: UK Health Security Agency
Address: 10 South Colonnade
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested information from the UK Health Security Agency (UKHSA) about the shingles vaccination programme. UKHSA responded by stating that it did not hold the information.
2. The Commissioner's decision is that, on the balance of probability, UKHSA does not hold the requested information. However, UKHSA breached sections 1(1)(a) and 10(1) of FOIA because it didn't confirm that it doesn't hold the information within the statutory timeframe.
3. The Commissioner does not require further steps.

Request and response

4. On 28 September 2023 the complainant wrote to UKHSA and requested information in the following terms:

"My requests for FOI questions as follows:

1. What is the business clinical case for vaccinating younger people who were 65 after 1 Sep 2023 than those currently ages 65-69. Surely the ages 68 -69 should be done first???

2. What risk assessment was done to justify vaccinating the younger people first than those already aged 65-69 (Surely people already

65 before 1 Sep 23 and ages 65-69 greater risk than those 65 after 1 Sep 2023)

3. Why am I who was 65 on 18 April 2023 being discriminated against when if I had been 65 on 18 September (Some 5 months later/younger) would now be eligible but instead will have to wait until I am 70 some 4 years and 7 months' later."

5. UKHSA responded on 29 September 2023 by stating that the above was not a request for recorded information. On 2 October 2023 UKHSA replied to the request as if it was an enquiry.
6. On 4 October 2023 UKHSA repeated again that it was not a request for information.
7. On 17 November 2023 the Commissioner wrote to UKHSA and said that he was of the opinion that questions one and two should have been considered as information requests.
8. On 29 November 2023 UKHSA provided the complainant with a response to questions one and two under FOIA. It stated that it did not hold the requested information and offered advice and assistance and links to related information.
9. The complainant did not accept that their request had been correctly responded to and asked for an internal review on 30 November 2023.
10. UKHSA provided an internal review on 11 December 2023 in which it maintained its position and stated that it had complied with the Commissioner's timeframe.

Scope of the case

11. The complainant contacted the Commissioner on 12 December 2023 to complain about the way their request for information had been handled.
12. The Commissioner considers that the scope of his investigation is to consider whether UKHSA holds this information. He will also consider if there have been any procedural breaches.

Reasons for decision

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

13. Section 1(1) of the FOIA states that: Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
14. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
15. In its response to the Commissioner UKHSA confirmed “that it did not conduct a business case or a risk assessment for the amendments to the shingles vaccination programme, as such the requested information is not held by UKHSA”.
16. In order to establish this, UKHSA discussed the request with the “key lead subject and implementation officials” for the programme:

“...the requested information is not held, as a ‘business clinical case for vaccinating younger people who were 65 after 1 Sep 2023 than those currently ages 65-69’ or ‘business clinical case’ for the Shingles Shingrix® programme was neither conducted nor necessary to inform, or implement, the changes advised by the Joint Committee on Vaccination and Immunisation (JCVI), to come into effect from 1 September 2023”.

UKHSA explains that “this is not unusual for the modifications introduced to this programme as part of the current in place ‘progressive catch up’”. A search “was not required or beneficial...”

17. UKHSA did provide an “informative” reply that “included information on the programme including the history behind the decision-making process” and “directing the applicant to the minutes of the meeting and the subsequent decisions as well as the current online publications regarding the changes”. It did carry out searches “on the minutes of the Shingrix project board (from 14/02/22 to the 19/09/23 – last meeting)” UKHSA also stated that “the Project Manager responsible for the Shingrix project board” carried out searches “of their UKHSA email address in relation to this request”. The search terms were “‘Business Clinical Case’ and ‘Risk Assessment’”.
18. UKHSA went on to explain to the Commissioner that when the request was first received the correspondence manager had carried out “initial

FOI checks of the JCVI secretariat mailbox for a 'business clinical case'; 'business case' within the dedicated shingles folder as well as the entire JCVI mailbox". There were no relevant results returned and the correspondence manager sought advice from the team and "staff consultations were held". The request -

"was discussed at the JCVI weekly team meeting with all staff members within the JCVI secretariat, which included key members who have been in position before and after the 'progressive catch up' was considered and introduced, the head of the JCVI secretariat and the lead for the programme in question (Shingles, Shingrix®)".

This concluded that a "'a business clinical case' was neither conducted nor necessary to inform, or implement, the changes advised by the JCVI committee, to come into effect from 1 September 2023". UKHSA explained that team meetings "are not recorded or documented" because they can contain the personal information of individual team members.

19. The only records held are electronic, no paper records are produced or provided to board members. "The folders of every Shingrix project board and the minutes for the Shingrix board meetings (from 14/02/22 to the 19/09/23 – last meeting)" were searched using the terms, "Business Clinical Case" and "Risk Assessment". Searches using the same terms were made on the UKHSA mailbox.
20. These searches "included information held locally on personal computers of key officials as well as on central shared network resources and emails". There are no hard copy documents existing "without an electronic version which would be locatable via central drive filing structure, mailboxes or Sharepoint (the pre-meeting document share programme)". The searches on the JCVI central network structure, the JCVI Secretariat, the mailbox of the head of Secretariat, and the mailbox of the secretariat lead for shingles programme using the terms referred to above, and variations of those terms combined with "the subject matter (shingles, or Shingrix)" with no date restriction, had returns but none of them fell within the scope of the request.
21. UKHSA is clear that no information falling within scope was ever held. The project manager uses recordings "to produce meeting minutes". Once the minutes are agreed as accurate, the recordings are deleted.
22. No information falling within scope was ever created and there were no statutory requirements or business purpose to do so.
23. The complainant does not accept that the requested information is not held "because their strategy for vaccinations by the wrong ages are

political so they can claim progress but when the facts are looked at it does not make any medical clinical vaccine prevention sense at all which is why they going to such lengths to not answer the questions". Their view is that, "Whilst JCVI recommend this decision allegedly it is ultimately UKHSA as the government department that either decide or pass to ministers to decide."

The Commissioner's view

24. It is beyond the Commissioner's regulatory powers to consider whether information should be held or the strategy behind vaccination programmes. Whilst the Commissioner understands the complainant's viewpoint, his conclusion is that UKHSA does not hold the requested information, on the balance of probability.

Procedural matters

25. In its internal review, UKHSA said that it had complied with the Commissioner's deadline. However, the statutory timeframe for the initial response to the complainant had already been missed. The Commissioner's deadline was his own and was meant to elicit a response from UKHSA.
26. Section 1(1)(a) of FOIA requires a public authority to confirm whether or not it holds information that's relevant to a request. Under section 10(1), a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request. The Commissioner has found that UKHSA failed to issue a response informing the complainant that it did not hold the requested information until after the statutory time for compliance. In failing to do so, UKHSA breached sections 1(1)(a) and 10(1) of the FOIA.

Right of appeal

27. 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

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

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