



Resolution

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November 2024
FOI_6872

The following information was requested on 13 November 2024:

Primary Care Appeal case - I was reviewing the appeals process for the below REF application.

REF: [SHA/25842](#)

I noticed, section 3.37 SOPs as provided with the appeal can be found at Appendix A. However, when scrolling down there is no Appendix A. Can you please share these with me.

Our Response

Thank you for your email dated 13 November 2024 in which you requested copies of the documentation (particularly SOPs as provided with the appeal) filed by Medival (Yorkshire) Ltd's ("**Medival**") in relation to its application for inclusion in the pharmaceutical list at 100 Allerton Road, Bradford, and its subsequent appeal ("**Request**").

As your Request relates to information which we hold in our capacity as a public authority, we have treated your request in line with the Freedom of Information Act 2000 ("**FOIA**"). Under the FOIA, we have two separate duties in relation to your Request: (i) firstly, to confirm whether or not we hold the information you have requested; and (ii) secondly, if we do hold such information, to provide you with a copy. We are required to comply with both of these duties, unless one or more of the exemptions contained within the FOIA applies.

With regard to our first duty, we confirm that we hold documentation relevant to Medival's application for inclusion in the pharmaceutical list, and its subsequent appeal. As you may be aware, under the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("**Regulations**") NHS Resolution ("**NHSR**") is the body tasked with determining appeals against refusal decisions like the one that NHS England made in Medival's case.

With regard to our second duty, we have considered your Request with reference to the legal principles of the FOIA. On this occasion, we have resolved to decline to provide you with the information you have requested in reliance on section 32(1) and/or 32(2) of the FOIA. Section 32 provides public authorities with a lawful justification for withholding information which is contained within documents that have been created or are held for the purposes of court, inquiry or arbitration proceedings.

Consistent with guidance published by the Information Commissioner's Office ("**ICO**"), NHSR's view is that the purpose of section 32 is to ensure that courts and other public bodies responsible for conducting proceedings maintain control over information relating to proceedings, and the FOIA cannot be used to circumvent existing access and discovery regimes. Under these regimes, parties to proceedings have the right to receive relevant information, and third parties have access to information which is made public in open court. This mirrors the way in which applications and appeals are determined under the Regulations, in that parties which are deemed to have a "*significant interest*" in their outcome are entitled to receive relevant information (unless it is fair for it to be withheld, or it is otherwise confidential), and only information which is published is available to the wider public.

We have briefly addressed the specific requirements of sections 32(1) and (2) of the FOIA below:

- Section 32(1)(a) provides public authorities with a lawful justification for withholding information if it is held within a document filed or placed in the custody of a court for the purposes of proceedings in a particular cause or matter. The word "court" in this context includes any tribunal or body exercising judicial power of the State.
- NHSR's view is that it operates as a court when it determines appeals under the Regulations. In reaching this view, NHSR took account of the fact it is the designated body for determining certain types of appeals under the Regulations, it has discretion to determine third party appeal rights, and appeals are required to be filed in a prescribed format akin to that of an appeal before a court. More widely, we also note that where contractual disputes involving NHS primary care contractors arise, most can only be referred to NHSR and cannot usually proceed to court.
- NHSR is satisfied that all of the information you have requested was placed in its custody for the purposes of determining Medival's appeal. As such, NHSR relies on section 32(1) as providing it with a lawful justification for withholding it.
- Section 32(2)(a) provides public authorities with a lawful justification for withholding information contained within a document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of that inquiry or

arbitration. Section 32(4)(c) clarifies that "*inquiry*" means "*inquiry or hearing held under any provision contained in, or made under, an enactment*".

- NHSR is satisfied that its determination of Medival's appeal qualifies as an inquiry for the purposes of section 32(4)(c). NHSR undertook an inquiry as to whether Medival's application fulfilled the requirements of the Regulations, considered relevant information and gave a binding determination. In terms of the requirement that this be held under a particular provision of an enactment, we note that Medieval exercised its right of appeal under paragraph 36, Schedule 2 of the Regulations, and that NHSR considered and determined the appeal by virtue of its functions under section 117 of the Regulations, in accordance with Part 3 of Schedule 3.

For completeness, we wish to draw your attention to the fact that a limited amount of information relevant to your Request is already in the public domain. You can access NHSR's appeal decision in Medival's case [here](#). The decision contains information which NHSR has deemed it appropriate and proportionate to make publicly available and explains its reasons for granting its appeal.

We trust that this response clearly explains why we have not provided you with the information you have requested.

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to [Tinku Mitra](#), Deputy Director of Corporate and Information Governance, Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliff House
Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/>