



Resolution

8th Floor,
10 South Colonnade
Canary Wharf
London
E14 4PU
Telephone: 020 7811 2700

July 2025
FOI_7299

The following information was requested on 1 July 2025:

*Please supply copies of all Documents, papers and meeting minutes relating to the decision by NHS Resolution to withdraw the pharmacy licence issued to Pharmaderm Ltd by Devon ICB, following an appeal by Bestway National Chemists Ltd submitted on their behalf by Rushport Advisory.
Decision conveyed under reference REF: SHA/26419 on 19th March 2025.*

Our Response

We provided a response on 3 July 2025 with:

Thank you for your request.

You can access the decision made by NHS Resolution's Primary Care Appeals service here: [26419-Pharmaceutical-Decision-Reg-18-Totnes.pdf](#).

We hope this information addresses your query. If there is anything more you need or if you have any further questions, please do not hesitate to get back to us.

You replied on the same day with:

Thank you for your response. You do not state where the pdf is available. Additionally, I requested all papers and meeting minutes that presumably are not contained in the pdf. I therefore do not consider my request satisfied.

For ease of reference, we attached a copy of the PDF version of the decision in a response sent on 3 July 2025. In response to: *Additionally, I requested all papers and meeting minutes that presumably are not contained in the pdf. I therefore do not consider my request satisfied.*

Our response is as follows:

Thank you for your email dated 3 July 2025 in which you requested copies of all documents, papers and meeting minutes relating to the decision by NHS Resolution to refuse Pharmaderma's application under reference SHA/26419 dated 19 March 2025. 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 the application for inclusion in the pharmaceutical list, and its subsequent appeal. Other than the attached note which relates to a meeting that took place on 13 March 2025 in relation to the case 26419, we do not hold any other meeting minutes. We have redacted the names of staff from the attached note as we believe it is exemption by virtue of section 40 of the FOIA. Please refer to the section 40 refusal notice below for further information.

Section 40 refusal notice

We have removed the names of staff from the attached note as we believe that disclosure of this information is exempt under Section 40(2) by virtue of section 40(3A) (i) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful to disclose such information, and any disclosure would therefore contravene the first data protection principle.

The likelihood exists that individuals who are the subject of this information may be identified either from this information alone, or in combination with other available information. NHS Resolution believes it has a greater responsibility to protect those individuals' identities,' as disclosure could potentially cause damage and/or distress. to those involved.

The individuals have not consented to their information being used in this way and we do not believe they would have a reasonable expectation that their personal data. would be released in this way.

Section 32 Refusal Notice

Under the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("**Regulations**") NHS Resolution ("**NHSR**") is the body

tasked with determining appeals against granted decisions like the one that Devon Integrated Care Board made in Pharmaderma's case.

With regard to our second duty under FOI, 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 rest of 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 the 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 the appeal qualifies as an inquiry for the purposes of section 32(4)(c). NHSR undertook an inquiry as to whether Pharmaderma'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 Bestway National Chemist Ltd 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 at [26419-Pharmaceutical-Decision-Reg-18-Totnes.pdf](#). The decision contains information which NHSR has deemed it appropriate and proportionate to make publicly available and explains its reasons for granting the 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 [Joanne Appleby](#), Deputy 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:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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

Pharmacy Appeals Committee

Date: 13 March 2025

Time: 9:15am

Venue: MS Teams

Present	Job Title
[REDACTED]	Head of Appeals
[REDACTED]	Technical Case Manager, Primary Care Appeals
[REDACTED]	Panel member, Primary Care Appeals
[REDACTED]	Panel member, Primary Care Appeals
In attendance	Job Title
[REDACTED]	Case Manager, Primary Care Appeals

The Members considered the following appeals taking decisions for the reasons set out in the Appendices. Committee members were asked to declare any interest in the case under consideration; none were declared.

Minutes

Case	Reference	Appeal Stage	Decision
1.	26419	Consideration of appeal	Quash and redetermine - refuse application



Chair