

Please contact: Access to Information Team

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09 December 2022

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Dear

Re: Your request for information under the Freedom of Information Act 2000
Ref no: FOI 2719 LSC

Thank you for your request dated 02 December 2022.

We can confirm that the ICB does hold the information you requested.

Please find our response to your questions below:

Q1	<p>Your Question:</p> <p>I would be grateful if you could confirm for which products you have a primary care rebate in place, when the agreement commenced and the end date.</p>
	<p>Our Response:</p> <p><u>Rebates in Place;</u></p> <p>AirFluSal_Forspiro AirFluSal_MDI Apidra Clenil Degarelix Espranor Fencino Fostair_NEXThaler Fostair_pMDI Free_Style_Libre Insuman Physeptone Pipexus Prostap Slenyto Xaggitin_XL</p> <p><u>Start and End Dates of Contracts;</u></p> <p>Lancashire and South Cumbria (LSC) ICB are not obliged to provide information relating to contract start and end dates. In this case, we believe that the information would, or would be likely to, prejudice the commercial interests of the ICB (section 43(2) of the Act) and the disclosure of the</p>

information would constitute a breach of confidence (section 41(1)(b) of the Act).

Lancashire and South Cumbria ICB has contracts which acknowledge that some details of the rebates are commercially sensitive and confidential.

Under section 41 exemption – information provided in confidence; the drug company expects information relating to the parts of the contract with LSC ICB to remain confidential. Not complying with this contract would provide a basis for an actionable breach of confidence. Therefore, we are unable to release the start and end dates of the contracts.

In line with the terms of these exemption in the Freedom of Information Act, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemptions being applicable. In this case, we have concluded that the public interest favours withholding the information.

You can find out more about Section 43 by reading the extract from the Act and some guidance points we consider when applying this exemption along with more information by reading the full text of the Act, available at: <http://www.legislation.gov.uk/ukpga/2000/36/section/43>, and details of section 41 can be found on the ICO website on the link below: <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure

- The FOIA requires that public sector organisations are open and transparent in relation to their business making decisions.
- Public have an interest in knowing how public funds are spent and know that funds are being used appropriately.

Public interest considerations favouring withholding the information

- Disclosure of the information may have a commercial impact for pharmaceutical companies. The release of this information may lead to NHS legal proceedings, or the reduction of future NHS rebates.
- It would be likely to damage the ICBs abilities to obtain new NHS rebates with pharmaceutical companies because other parties would be aware that their commercial advantage may be affected with the release of start and end dates of the rebates.
- Providing this information would be a breach of confidence and would likely impact the ICB gaining future rebates with the current pharmaceutical companies as well as obtaining new ones.

Having considered the arguments for and against disclosure, Lancashire and South Cumbria ICB decided that the public interest in this case is best served by maintaining the exemption and by not disclosing the information requested. Lancashire and South Cumbria ICB considers that the possible benefits of disclosure are outweighed by the real risk of causing prejudice to the commercial interests of the ICB itself. In this case there is an overriding public interest in ensuring that companies are able to compete fairly and in ensuring there is competition for public sector contracts.

<p>We reached the view that, on balance, the public interest is better served by withholding this information under Section 43(2) and Section 41(1)(b) of the Act at this time.</p>
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Right of Appeal

Should you require any further information or clarification regarding this response please do not hesitate to contact us. If you are dissatisfied with the response, you are entitled to request an internal review which should be formally requested in writing and must be within two calendar months from the date this response was issued.

To request an internal review

You can request this by contacting the FOI team by email at MLCSU.FOITeam@nhs.net or by post to Jubilee House, Lancashire Business Park, Leyland, PR26 6TR, specifying why you require a review.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the CCGs FOI complaints procedure. The ICO can be contacted at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
www.ico.gov.uk

Yours sincerely

**On behalf of Kevin Lavery
ICB Chief Executive**