

Please contact: Access to Information Team

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13 June 2023

**Re: Your request for information under the Freedom of Information Act 2000**  
**Ref no: FOI-3075-LSC**

Thank you for your request dated 17 April 2023.

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

Please find our response to your questions below:

1. Which primary care rebate schemes is your ICB/ Health Board currently signed to?

If possible, could you please provide the start and end dates of these contracts.

As of 1<sup>st</sup> May 2023, Lancashire and South Cumbria ICS is signed up to the following rebates:

- Apidra
- Clenil
- Degarelix
- Espranor
- Fencino
- Fostair\_NEXThaler
- Fostair\_pMDI
- Free\_Style\_Libre
- Insuman
- Physeptone
- Pipexus
- Prostag
- Slenyto
- Xaggitin\_XL

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 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/fororganisations/documents/1432163/information-provided-inconfidence-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.

Having taken into account the arguments for and against disclosure, NHS 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, at this stage. The ICB considers that the possible benefits of disclosure are outweighed by the real risk of causing prejudice to commercial interest of the Pharmaceutical Company provider concerned. In this case there is an overriding public interest in ensuring that companies are able to compete fairly and ensuring that there is competition for public sector contracts.

We reached the view that, on balance the public interest is better served by withholding this information under Section 43(2) of the act at this time.

### **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](mailto: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](http://www.ico.gov.uk)

Yours sincerely

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