

# Decision Notice



Decision 091/2011 Dr Kenneth McAlpine and Grampian Health Board

Investigation and review reports

Reference No: 201100429  
Decision Date: 18 May 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Dr McAlpine requested from Grampian Health Board (NHS Grampian) a report on an investigation into concerns about the care of a particular patient, and also the appendices to another report. NHS Grampian responded by providing some information, but also by stating that it did not hold the remainder of the requested information. Dr McAlpine remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that NHS Grampian had dealt with Dr McAlpine's request for information in accordance with Part 1 of FOISA, concluding that it did not hold any further information. He did not require NHS Grampian to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 31 May 2010, Dr McAlpine wrote to NHS Grampian requesting the appendices to a report ("Review of Pathway for Older People" of May 2007) which had been provided in response to an earlier request. He noted the absence of these appendices from the information provided earlier, but also indicated that he was primarily seeking a report on the investigation of concerns he had raised about the care of a particular patient, which he understood had been undertaken by (or with the assistance of) the Joint Improvement Team (JIT).
2. NHS Grampian responded on 30 June 2010. It stated that there were three appendices to the "Review of Pathway for Older People" (the Review of Pathway). It provided a copy of Appendix 3, but stated that it did not hold copies of any of the other appendices, or of the other report referred to in his request. It believed that the information in question might have been destroyed.



3. On 7 August 2010, Dr McAlpine wrote to NHS Grampian requesting a review of its decision, providing reasons why he believed the information should still be held.
4. NHS Grampian notified Dr McAlpine of the outcome of its review on 9 September 2010. It explained that it was able to provide Dr McAlpine with Appendix 2 to the Review of Pathway, but was unable to locate Appendix 1 or the other report requested.
5. On 5 March 2011, Dr McAlpine wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Grampian's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Dr McAlpine had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer subsequently contacted NHS Grampian, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, NHS Grampian was asked to detail and explain the searches it had conducted to assess whether it held the information requested, with reference to any relevant retention periods.
8. The submissions received from NHS Grampian will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Dr McAlpine and NHS Grampian and is satisfied that no matter of relevance has been overlooked.

### Section 17 – Notice that information is not held

10. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information. In terms of section 1(4), the information an authority is required to provide in response to a request is generally that held by it at the time the request is received (see the Appendix for the full text of the subsection).



11. The Commissioner must therefore consider whether NHS Grampian was justified in arguing that it did not hold either Appendix 1 to the Review of Pathway, or the other report referred to in Dr McAlpine's request.
12. NHS Grampian explained the steps it had undertaken to establish that it did not hold the information.
13. Firstly, the Personal Assistant to the General Manager of the Moray Health and Social Care Partnership (MCHSP) had conducted an extensive search of the MCHSP data server where all electronic documentation was stored securely. NHS Grampian explained that the appendices requested and any additional reports would have been created in Microsoft Word and saved on the MCHSP data server in either Microsoft Word or Adobe PDF format. NHS Grampian submitted that "all relevant" search terms had been used to locate the information, although it was not possible to contact the Personal Assistant to confirm what these had been. It advised that the data server allowed searches to be conducted on both file names and words and phrases contained within files, so every avenue would have been explored in assessing whether the information was held.
14. The Personal Assistant to the General Manager (MCHSP) had also conducted an extensive search of the General Manager's paper archive, where all paper documentation was stored. While the documents referred to would have been created in Microsoft Word, any printed copies held by the General Manager would be contained in this archive.
15. Thirdly, the General Manager (MCHSP) had asked the MCHSP Senior Team - made up of both Moray Council and NHS Grampian staff - to search their records. NHS Grampian explained that any relevant documentation would likely have been circulated to the Senior Team in electronic or paper format.
16. Fourthly, a request had been made to the Joint Future Manager in NHS Grampian and the secretariat of the JIT, to search electronic and paper records held by the JIT.
17. NHS Grampian provided a full list of all members of staff it had consulted in searching for the information. That list comprised seventeen named persons, plus the secretaries of all senior managers in the Moray area. NHS Grampian confirmed that the list represented all likely recipients of the documentation in question.
18. NHS Grampian was asked about its records management policy for such documentation. It replied that while there was no specific retention period applied to the information requested and it was not customary to archive all documents which led to the creation of a strategic document, typically in NHS Grampian documents should be kept as long as they were relevant. In this case, it indicated, best practice would have been to retain any relevant documentation at least until the review of the relevant Older People's Strategy in 2014.



19. NHS Grampian emphasised that it took Records Management very seriously and that there was a variety of information available to all of its staff to help them manage records appropriately. It explained that its Records Management Policy was published on its intranet, along with 17 Records Management Factsheets on subjects including how to store paper records, how to manage electronic records, how to manage electronic documents using Microsoft Office, and how to destroy records. In addition to this, NHS Grampian advised that its staff were required to undertake Information Governance training via an e-learning package, including which includes a short module on Records Management.
20. NHS Grampian stated that, with regard to Appendix 1 to the Review of Pathway, it regretted that it had been unable to locate this document despite the extensive searches described.
21. With respect to the other report requested by Dr McAlpine, NHS Grampian explained that it was important to note that the JIT's work specifically looked at service improvement and did not produce any documentation specific to individual patients. It therefore considered it unlikely that any report involving the JIT relating specifically to the care of a particular patient would have been published. NHS Grampian confirmed that the hospital referred to in Dr McAlpine's request was, however, visited by the JIT as part of their review and improvement work in Moray, which had culminated in the creation of the Older People's Strategy referred to above.
22. Having considered the submissions and explanations he has received, including the reasons why Dr McAlpine believed the information should be held (and there would appear to be no doubt in this case that the missing Appendix 1, at least, *should* have been held by the authority), the Commissioner is satisfied that adequate steps were taken by NHS Grampian to determine whether it held the information requested by Dr McAlpine. In the circumstances, he is satisfied that NHS Grampian did not hold any further information falling within the scope of Dr McAlpine's request (in addition to that disclosed by the end of the review process) at the time it received the request, and consequently finds that NHS Grampian was correct to give Dr McAlpine notice to that effect on conclusion of its review.
23. The Commissioner has noted Dr McAlpine's concerns as to whether the investigation about the care of a particular patient was ever conducted, but must make clear that these are not within his remit to investigate.

## DECISION

The Commissioner finds that Grampian Health Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr McAlpine.

Decision 091/2011  
Dr Kenneth McAlpine  
and Grampian Health Board



## Appeal

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Should either Dr McAlpine or Grampian Health Board wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**18 May 2011**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

##### 17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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