Decision Notice

Decision 207/2014: Mr Ian G Jones and Healthcare Improvement Scotland

Patient safety climate survey

Reference No: 201401251
Decision Date: 22 September 2014

Scottish Information Commissioner

Summary

On 9 February 2014, Mr Jones asked Healthcare Improvement Scotland (HIS) for results of a patient safety survey conducted by a specific medical practice, with the corresponding average results for both Fife and Scotland as a whole. HIS initially stated that it did not hold the information, however later provide some information whilst stating that other information was being withheld as disclosure would substantially prejudice the effective conduct of public affairs.

Following an investigation, the Commissioner accepted that the remaining information had been correctly withheld.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs)

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

1. On 19 February 2014, Mr Jones wrote to HIS requesting the anonymised results of the patient safety climate survey (SCS) conducted on HIS's behalf in 2013 for the Bank Street general medical practice in Cupar, Fife, and a copy of the corresponding average results for Fife and Scotland for comparison purposes.
2. HIS responded on 13 March 2014. HIS informed Mr Jones that it did not hold the information requested and submitted that, in accordance with section 3(2)(a)(i) of FOISA, it held the information on behalf of the general practices that supplied the information to the HIS database. It also explained that any information held had been analysed by the participating general practices and that HIS did not access, extract or copy the information in any way.
3. On 14 March 2014, Mr Jones wrote to HIS requesting a review of its decision. In particular, Mr Jones argued that HIS did hold the information: he did not agree with HIS's version of how it was produced.
4. HIS notified Mr Jones of the outcome of its review on 1 April 2014. It upheld its previous response that it did not hold the information, providing further explanation but applying the same reasoning as before.
5. On 16 April 2014, Mr Jones wrote to the Commissioner, stating that he was dissatisfied with the outcome of HIS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. Following this application, HIS accepted that it did hold the information requested and, on 6 June 2014, provided Mr Jones with a further review outcome. It provided Mr Jones with some information (for Fife and all other NHS Board areas) but withheld the practice-level information in terms of section 30(c) of FOISA, arguing that disclosure would substantially

prejudice the effective conduct of public affairs. It also stated that it had considered the public interest and provided reasoning.

7. On 8 June 2014, Mr Jones wrote to the Commissioner (withdrawing his initial application), stating that he was dissatisfied with HIS's review outcome of 6 June 2014 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

8. The application was validated by establishing that Mr Jones made a request for information to a Scottish public authority and 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

9. On 3 July 2014, the investigating officer notified HIS in writing that an application had been received from Mr Jones, giving HIS 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. HIS was asked to justify its application of section 30(c) of FOISA.

10. HIS responded on 29 July 2014 providing its submissions as to why it considered the information to be exempt from disclosure in terms of sections 30(c) and 38(1)(b) of FOISA.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Jones and HIS. She is satisfied that no matter of relevance has been overlooked.

Section 30(c) – Prejudice to effective conduct of public affairs

12. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by release of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.

13. As the Commissioner has said in previous decisions, the standard to be met in applying the tests contained in the section 30(c) exemption is high. In particular, the prejudice in question must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case by case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

14. HIS provided the background to the information in question, in the context of its Quality and Outcomes Framework (QOF) and its role in increasing patient safety.

15. HIS submitted that a positive safety culture was essential to delivering safe, high quality care in any environment. It stated that systems and organisational issues were recognised as major contributors to harm in primary care and that harm was more likely to occur when there was poorer teamwork and communication and a lack of focus on quality or safety.

16. HIS emphasised that the SCS was a voluntary questionnaire, asking individuals to give their subjective views about a practice's safety culture. It required an honest reflection of the individual's experience of the practice, if it was to offer a meaningful self-assessment of areas for potential improvement.

17. HIS explained that historically GP practices often had hierarchical structures, making it difficult for more junior staff members to raise concerns. The survey allowed concerns of this kind to be highlighted, opening a barrier-free dialogue around improvement. The aim was that all GPs and practice-employed staff would take part: they were informed that the information was for internal use only.

18. HIS confirmed that all staff were made aware of the reported results following the survey. Practices would then meet and identify areas for improvement, and might then repeat the process to assess progress. It highlighted the importance of the SCS as an improvement tool. It considered it likely such reviews would become less open if differences in scoring between staff groups were highlighted through disclosure.

19. HIS also submitted that the disclosure of the information withheld would increase the pressure on individuals to give answers giving a favourable perception of the practice in the eyes of the local community. It argued that positively inflated scores would mean the loss of valuable opportunities across Scotland to identify areas for improvement. It would also affect the accuracy of the survey results.

20. By extension, HIS argued that making the SCS open to external scrutiny would deter participation in a voluntary exercise. This would result in the loss of valuable information, with a negative impact on public safety.

21. HIS further submitted that the effect of any one disclosure would be to increase the likelihood of others, further increasing the risk of comparison between practices and inflation of scores (rather than the use of accurate scores for learning). In this connection, it noted that similar surveys were used for improvement purposes in other areas of the Health Service: disclosure would be perceived a setting a precedent, with "knock-on" impacts on safety improvement work in these areas.

22. While HIS accepted that survey completion contributed to incentive payments as part of the QOF, it emphasised the relatively low level of contribution to these payments. It also emphasised that individual staff were not paid for taking part in the survey.

23. In his application to the Commissioner, Mr Jones did not accept that the publication of the information would have a negative impact as claimed by HIS. He believed practices completed the survey because it was part of the QOF and attracted payment. He also submitted that the disclosure of the information would not identify any individual patient, doctor or other practice employee. He could not identify any commercial conflict of interest which would justify withholding the data.

24. Having considered the nature and content of the withheld information, together with HIS's and Mr Jones' submissions, the Commissioner accepts that disclosure of the withheld information would be likely to cause substantial prejudice to the effective conduct of public affairs, and specifically to the integrity and value of surveys carried out with a view to improving patient safety.

25. In the circumstances in which the information was supplied, by staff of a general medical practice for particular purposes, the Commissioner acknowledges that it was provided voluntarily, on the understanding that it was for internal NHS use. She is satisfied as to the risk of disclosure having the effects claimed on the individuals taking part, in this particular case, and the consequent detriment to the survey and its subsequent use. The same may not be true for every survey of this kind, but the Commissioner has reached this conclusion on the basis of all relevant factors present here, including the range of staff (from senior professionals to the most junior) and the relatively small group populations involved.

26. In all the circumstances, the Commissioner accepts that HIS was correct to apply the exemption in section 30(c) of FOISA to this information.

27. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

Public Interest Test

28. As stated in previous decisions, the "public interest" is not defined in FOISA, but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

Submissions by Mr Jones

29. Mr Jones argued that there were good public interest reasons for disclosing the information. He gave examples of where other anonymised patient safety data had been disclosed, to help monitor standards and ensure incidents were not repeated. This contributed to public reassurance. He submitted that the same open approach to patient safety should be adopted in relation to general practice as in the hospital sector.

Submissions by HIS

30. HIS acknowledged a general public interest in transparency and accountability in healthcare providers, and in allowing public scrutiny of their safety practices. It also accepted that it had a duty to provide information to the public about the availability and quality of services provided under the health service, in such form as a person might reasonably request.

31. HIS also took account of the assistance provided to the public by disclosure of detailed information about practice staff perceptions of the safety climate. This, HIS submitted, would help in understanding the importance of good team work in primary care services, and to increase confidence in NHS Scotland.

32. HIS went on to identify what it believed were significant factors which favoured maintaining the exemption. It referred to a strong public interest in ensuring that all practices and individuals involved were willing to engage fully with the safety climate tool. It also believed there was a risk of increased motivation to identify low-scoring staff members, which it argued was a powerful inhibitor to unbiased responses.

33. HIS noted that each practice currently accessed its own results and a snapshot of national averages, to allow it to compare practice and help see where it needed to focus improvements. It submitted that effective learning from reflection on the safety climate was more likely within a team rather than from public comparison of practices. Given the perceived consequences of disclosure for survey bias (among less senior staff in particular) and practice uptake, and the motivation for identification of low-scoring individuals, HIS considered, on balance, that there is a stronger public interest in maintaining the exemption than in disclosing the information.

34. Finally, HIS submitted that any legitimate public interest in the performance of general practices could be met by reading the relevant results of the Health and Care Experience Survey 2013-2014, published online at: www.healthcareexperienceresults.org/reports2014/20413-GP2013.pdf

The Commissioner's conclusions

35. There is always a general public interest in transparency and accountability, particularly in areas involving spending from the public purse and the services provided to the public by all areas of the NHS, including individual practices. More particularly, the Commissioner accepts the importance of transparency and accountability in relation to patient safety, both to allow effective scrutiny and to reassure the public where appropriate.

36. On the other hand, the Commissioner has already acknowledged the risk of substantial prejudice to the effective conduct of public affairs in this case, with particular reference to the effect of disclosure on the relationships of trust and confidence HIS must maintain in order to carry out such surveys in the future. She accepts that such harm would not be in the public interest, given the importance of such tools to HIS in improving patient safety. Openness has a role in this, but HIS must also be able to discharge its own functions effectively. The Commissioner notes the quality information published already on this practice, from the Health and Care Experience Survey.

37. The published information may not refer to practice staff views on patient safety, which the Commissioner acknowledges is an important indicator, but equally it does not carry with it the risks of inhibition associated with disclosure of the SCS results, with its likely consequences for HIS's work in this area. In all the circumstances, the Commissioner is satisfied that any public interest in disclosure is outweighed by that in maintaining the exemption and allowing the information to be withheld.

38. The Commissioner therefore finds that HIS was entitled to withhold the practice-level information under section 30(c) of FOISA.

39. As the Commissioner has determined that HIS was correct to withhold the information under section 30(c) of FOISA, she is not required to consider the application of section 38(1)(b) of FOISA (which was also applied to this information by HIS).

Decision

The Commissioner finds that Health Improvement Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Jones.

Appeal

Should either Mr Jones or Health Improvement Scotland wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
22 September 2014

Appendix

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.

…

(6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

…

(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

…

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

…

(c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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