

Decision Notice

Decision 183/2016: Mrs Neilson and NHS Greater Glasgow & Clyde

Name of Lead Investigator

Reference No: 201600916

Decision Date: 25 August 2016



Scottish Information
Commissioner

Summary

On 3 September 2015, Mrs Neilson asked Greater Glasgow and Clyde Health Board (NHS Greater Glasgow & Clyde) for the identity of the Lead Investigator for a specified “Significant Clinical Incident” (SCI).

NHS Greater Glasgow & Clyde gave Mrs Neilson the name of the Lead Investigator in its response. Following a review, Mrs Neilson did not accept that the name she was given was the one recorded in NHS Greater Glasgow & Clyde’s data systems and she applied to the Commissioner for a decision.

The Commissioner investigated and found that NHS Greater Glasgow & Clyde had addressed Mrs Neilson’s request by way of advice and assistance, although it should have confirmed that it did not hold the information in question in recorded form.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) Duty to provide advice and assistance); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 3 September 2015, Mrs Neilson made a request for information to NHS Greater Glasgow & Clyde, in which she asked:
“Please confirm the identity of the Lead Investigator for this SCI.”
2. NHS Greater Glasgow & Clyde responded on 14 September 2015, naming the Clinical Risk Manager it considered to have been the Lead Investigator for this case.
3. On 10 November 2015, Mrs Neilson wrote to NHS Greater Glasgow & Clyde requesting a review of its decision. She explained she had contradictory information, obtained from NHS Greater Glasgow & Clyde.
4. NHS Greater Glasgow & Clyde notified Mrs Neilson of the outcome of its review on 1 December 2015. The reviewer upheld the original response, explaining that the other individual identified by Mrs Neilson was a member of the enquiry panel but not the lead investigator.
5. On 12 May 2016, Mrs Neilson wrote to the Commissioner. Mrs Neilson applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs Neilson stated she was dissatisfied with the outcome of NHS Greater Glasgow & Clyde’s review because she had not been given recorded information. Instead, she felt she had simply been told the name, which in her view was contradicted by information held by NHS Greater Glasgow & Clyde (in a data record confirming the information highlighted in her requirement for review).

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mrs Neilson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 8 June 2016, NHS Greater Glasgow & Clyde was notified in writing that Mrs Neilson had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Greater Glasgow & Clyde was invited to comment on this application and answer specific questions, with reference to Mrs Neilson's submissions and the steps taken to identify and locate any relevant information held.

Commissioner's analysis and findings

9. 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 Mrs Neilson and NHS Greater Glasgow & Clyde. She is satisfied that no matter of relevance has been overlooked.
10. In her application, Mrs Neilson submitted that she had not been given recorded information. She commented on a copy of a data system record (a "datix" record) she had obtained by other means, which gave the name of another person as the Lead Investigator. She contended that this record contradicted the authority's response to her request.

Has all the relevant information held by the authority been identified and disclosed?

11. The investigating officer asked NHS Greater Glasgow & Clyde how it established what records it held which identified the Lead Investigator.
12. NHS Greater Glasgow & Clyde explained its position in response. It explained that the individual identified in its response as the Lead Investigator had confirmed that role from personal knowledge. The individual held no recorded information evidencing the lead role and how it was allocated. It also explained it was not considered necessary to carry out further searches, as the officer in question had clearly confirmed their role. It accepted that officer's position and did not seek rely upon the other information identified by Mrs Neilson.
13. NHS Greater Glasgow & Clyde also provided the Commissioner with an explanation regarding the information identified by Mrs Neilson. It confirmed that the person referred to by Mrs Neilson had led the medical investigation side of the SCI, but not the investigation as a whole. The individual identified in response to Mrs Neilson's request had been involved in all interviews and written the report, assuming the role of Lead Investigator in the process.

Commissioner's conclusions

14. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code) states (at paragraph 6.1.3):

Searches should be proportionate and focus on systems (whether paper-based or electronic) where staff with a working knowledge of the records relating to the information request consider what information might be held.¹

15. The Commissioner recognises the importance of utilising staff with relevant subject knowledge, to ensure any searches remain both focused and proportionate. In this case, the Commissioner notes that no searches were carried out and that the personal knowledge of such a staff member was relied upon in its entirety. The Commissioner has considered the explanations provided by NHS Greater Glasgow & Clyde and, on balance, accepts them as reasonable in the circumstances. The logical conclusion, however, is that the information sought by Mrs Neilson was not held by the authority: the information Mrs Neilson identified was considered no longer relevant, if indeed it ever had been.
16. The Commissioner must find, therefore, that NHS Greater Glasgow & Clyde failed to deal with Mrs Neilson's request in accordance with section 17(1) of FOISA, by not giving Mrs Neilson notice that it did not hold the information she sought. She acknowledges, however, that NHS Greater Glasgow & Clyde wanted, quite reasonably, to confirm its understanding of the current position rather than merely stating it did not hold any relevant recorded information.
17. In identifying who, within its own organisation, is responsible for a particular matter, a public authority must be allowed to exercise a degree of judgement. Unless it reaches a conclusion which is wholly contradicted by the available evidence or is otherwise wholly unreasonable, it is not a judgement with which the Commissioner can readily interfere. In this case, the identity of the person fulfilling the role of Lead Investigator was confirmed by the authority's Head of Board Administration, in the review outcome, affirming the understanding (backed by explanation) of the individual concerned. The name provided clearly represents the position of NHS Greater Glasgow & Clyde. It should have been made clearer, perhaps, that this information was being provided by way of advice and assistance rather than the provision of recorded information.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (NHS Greater Glasgow & Clyde) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Neilson.

The Commissioner is satisfied that NHS Greater Glasgow & Clyde disclosed to Mrs Neilson the name she sought in her request, by way of advice and assistance in terms of section 15(1) of FOISA. It did not, however, notify her that it did not hold the information in question in recorded form, and thus failed to comply with section 17(1) of FOISA.

¹ <http://www.gov.scot/Resource/0046/00465757.pdf>

Appeal

Should either Mrs Neilson or NHS Greater Glasgow and Clyde 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
Deputy Head of Enforcement

25 August 2016

Appendix 1: 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.

...

(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.

...

15 Duty to provide advice and assistance

(1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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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