

Decision Notice

Decision 052/2019: Ms Q and Grampian Health Board

Medical appointments held in a toilet

Reference No: 201802071

Decision Date: 3 April 2019



Scottish Information
Commissioner

Summary

NHS Grampian was asked how many medical appointments took place in a toilet between specified dates. It responded to the effect the information was not held. The Commissioner investigated and accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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 30 October 2018, Ms Q made an information request to Grampian Health Board (NHS Grampian) in which she asked for information:
 - (i) showing how many medical appointments had taken place in a toilet between 16 August 2010 and the date of the request, and
 - (ii) the current waiting times for a psychiatrist's initial interview and subsequent therapy sessions.
2. NHS Grampian sought clarification (1 November 2018) on what was meant by "toilet" in the context of the first part of the request and also whether, in the second part, Ms Q was looking for information regarding psychotherapy sessions
3. Ms Q provided clarification (also 1 November 2018), confirming that she did mean "toilet", in the sense of a toilet cubicle and confirmed that her second question related to her own personal data so should not be answered under FOISA: instead, it ought to be dealt with under data protection legislation.
4. NHS Grampian responded on 16 November 2018. NHS Grampian stated, in terms of section 17 of FOISA, that it held no information for the first part of the request. For the second part, it provided general information regarding waiting times.
5. Ms Q wrote to NHS Grampian on 19 November 2018, stating that she was dissatisfied with the response to part (i) of the request and seeking a review.
6. On 22 November 2018, NHS Grampian notified Ms Q of the outcome of its review, upholding its original response and confirming that it held no information.
7. On 26 November 2018 and 5 January 2019, Ms Q wrote to the Commissioner's Office. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Q stated she was dissatisfied with the outcome of NHS Grampian's review because she could not believe the information she sought was not held.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Ms Q made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
9. On 14 January 2019, NHS Grampian was notified in writing that Ms Q had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Grampian was invited to comment on this application and to answer specific questions. These related to its searches and whether any information capable of addressing Ms Q's request was held.

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 him by both Ms Q and NHS Grampian. He is satisfied that no matter of relevance has been overlooked.
12. In her requirement for review and also in her application to the Commissioner, Ms Q referred to part (i) of the request only as being pursued under FOISA. In the circumstances, that is the only part the Commissioner can consider.

Part (i) - what information, if any, was held?

13. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what a public authority ought to hold, but he can consider whether NHS Grampian took adequate, proportionate steps to establish what information, if any, it held and which fell within the scope of Ms Q's request.
14. The standard of proof in considering whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
15. In a supplementary email (5 January 2019) to her application, Ms Q submitted that she did not accept there was no information held on the numbers of appointments in toilet cubicles. She gave additional comments in support of this view.

Searches

16. NHS Grampian submitted details of how it had conducted its searches for information, explaining that staff from the Freedom of Information, Health Intelligence and Mental Health Services teams were involved, being those most likely to have the required experience and working knowledge. NHS Grampian considered it highly unlikely that any system or document it held would contain such information [on such an exact location of an appointment].
17. NHS Grampian confirmed it used a main Patient Management System called "Trakcare", an electronic, hospital wide system which it considered to be the only one capable of addressing the question raised. It went on to explain that the system records hospital activity,

in-patient/day cases/out-patient data and, crucially (for this search), a patient's medical information. It recorded information about appointments at the level of the specialist service or clinic used, but not the location in the sense of the room used or any greater level of precision. Neither would such detailed information be held in paper patient records.

18. NHS Grampian confirmed in its submissions that relevant paper and electronic records were searched and manually checked again for the time period specified in Ms Q's request. No relevant information on location was found at the level of detail required.
19. Having considered all the submissions and terms of the request, the Commissioner is satisfied that NHS Grampian took adequate, proportionate steps to establish what information was held in this case. Given the explanations provided, the Commissioner is satisfied that NHS Grampian did not, on receipt of the information request, hold the information requested by Ms Q. Whether there was a need to record more detail is not a matter on which the Commissioner can comment; to do so would extend beyond his remit under FOISA.

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 Ms Q.

Appeal

Should either Ms Q or Grampian Health Board 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

3 April 2019

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.

...

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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info