

Decision Notice 085/2021

Infections and deaths linked to Covid-19 in Caithness

Applicant: The Applicant

Public authority: Highland Health Board

Case Ref: 202100138



Scottish Information
Commissioner

Summary

NHS Highland was asked for the total number of infections and deaths attributed to Covid-19 in the Caithness area broken down to neighbourhood level.

NHS Highland informed the Applicant that the information was available in the public domain and provided links to facilitate access to this.

The Commissioner found that, as the information covered by the Applicant's request was not otherwise accessible to him via the links provided, NHS Highland had failed to comply with FOISA in responding to his request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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 26 December 2020, the Applicant made a request for information to Highland Health Board (NHS Highland). The information requested was:
 - a) The total number of Covid-19 cases diagnosed in each of the seven "neighbourhood" areas in Caithness between 13 and 19 December 2020 and between 20 and 26 December 2020.
 - b) The total number of deaths attributed to Covid-19 in each of the seven "neighbourhood" areas in Caithness between 13 and 19 December 2020 and between 20 and 26 December 2020.
2. NHS Highland responded on 12 January 2021. NHS Highland informed the Applicant, in response to part (a), that confirmed cases of Covid-19 at neighbourhood level are reported daily by Public Health Scotland (PHS) as part of its Covid-19 Daily Dashboard. A link was provided to enable the Applicant to access this. In response to part (b), NHS Highland provided the Applicant with a link to the National Records of Scotland (NRS) website. NHS Highland stated that this website provided an extensive overview of deaths involving Covid-19.
3. NHS Highland relied on section 25(1) of FOISA for refusing to disclose this information, as it considered the information to be in the public domain and accessible through the PHS and NRS websites.
4. On 13 January 2021, the Applicant wrote to NHS Highland, requesting a review of its decision on the basis that it had not provided him with the recorded information requested. The Applicant contended that NHS Highland could not rely on section 25(1) of FOISA in this case, because the specific numbers requested for each of the local neighbourhoods were not available in the public domain.
5. NHS Highland notified the Applicant of the outcome of its review on 14 January 2021. In doing so, it upheld its original response and signposted the Applicant to specific data on the

PHS and NRS websites, as well as NHS Scotland's Health and Social Care Open Data platform, linking to data on the PHS website.

6. On 30 January 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of NHS Highland's review for the following reasons:
 - (i) The review response did not provide the exact numbers of Covid-19 cases diagnosed in the seven Caithness neighbourhoods.
 - (ii) The review response did not cite the exact number of deaths that were attributed to Covid-19 in the seven Caithness neighbourhoods.
 - (iii) NHS Highland did comply with section 15, but the links and advice provided in the final and review responses were unhelpful, in so far as the recorded information requested in the application was not available.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
8. On 8 February 2021, NHS Highland was notified in writing that the Applicant had made a valid application.
9. 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 Highland was invited to comment on this application and to answer specific questions. These related to why NHS Highland considered information which would fulfil the Applicant's request to be otherwise accessible to him, with particular emphasis on the information available on the PHS and NRS websites and whether this was capable of being broken down to "neighbourhood" level.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and NHS Highland. He is satisfied that no matter of relevance has been overlooked.

Section 25 – Information otherwise accessible

12. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. Section 25(1) is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.
13. NHS Highland relied on section 25(1) of FOISA for both parts of the Applicant's request and provided him with links to the PHS and NRS websites.
14. The Commissioner will look at each part of the Applicant's request separately.

Part (a) Covid-19 diagnoses

15. For this part of the request, NHS Highland gave the Applicant a link to the PHS website, together with instructions on how to sort the data.
16. NHS Highland commented that PHS publishes statistics relating to Covid-19 cases and this data is published daily, broken down by NHS Health Board area. NHS Highland commented that this could be easily broken down to the seven neighbourhood areas in Caithness. NHS Highland provided guidance to the Commissioner which explained how the data on the PHS website could be sorted to find the data for the seven neighbourhood areas.
17. NHS Highland also submitted that this data source is advertised publicly, not least during the regular Covid-19 briefings provided by the First Minister of Scotland.
18. NHS Highland explained that the statistical information available on the PHS website is provided directly by the territorial health boards and is published by PHS with the intention of being open and honest with the public and to try to prevent NHS territorial boards from being overwhelmed with similar requests.
19. Having accessed the PHS website, specifically the “Cases by Neighbourhood” section and selected the Highland local authority area, together with the time periods covered by the Applicant’s request, the Commissioner is satisfied that it is possible to view each of the seven neighbourhood areas making up the Caithness area separately.
20. However, the Commissioner does not agree that the data provided gives an accurate/precise total figure for the number of cases of infection in each of the neighbourhood areas. It is evident from reading the publicly available data that in some instances the numbers of infections are expressed within a range, i.e. 0-2. As such the Commissioner is unable to accept that information which would fulfil the Applicant’s request fully for each neighbourhood area is otherwise accessible to him from the PHS website. The Commissioner does not doubt NHS Highland’s reasonable intentions in attempting to direct the Applicant to the information that is available to the public, but that information does not address the request fully.

Part (b) Deaths attributed to Covid-19

21. For this part of the request, NHS Highland provided the Applicant with a link to the NRS website noting that the dataset provides details of the number of deaths at local authority level.
22. NHS Highland commented that NRS published statistics relating to deaths attributed to Covid-19 on a weekly basis. It also submitted that it understood the data on the NRS website to be the most accurate, as NRS registers all deaths where the cause is Covid-19 or where there is a diagnosis of Covid-19 within a 28-day period. NHS Highland commented that this included deaths which were not in hospital.
23. NHS Highland acknowledged that the data available on the NRS website could only be broken down to NHS Health Board level and not further divided into neighbourhood area.
24. Having accessed the NRS website using the link provided by NHS Highland, the Commissioner was able to access weekly statistics for the number of deaths occurring in the NHS Highland health board area. However, whilst these statistics are recorded and published on a weekly basis, the dates covered by each week (as recorded by the NRS) do not allow for the data to be extrapolated or interpreted easily to cover the two time periods

specified in the Applicant's request. For the Applicant to be able to access the data for the two specific timescales set out in his request, he would have to analyse data held by NRS for weeks 50, 51, 52 and 53: these overlap the data ranges he has specified. Furthermore, as NHS Highland has acknowledged, the information on the NRS website is not capable of being broken down into neighbourhood areas. Given these factors, with the fact that it is clear that some deaths were recorded in the timescale covered by the request in the NHS Highland area (which may or may not relate to Caithness), the Commissioner is unable to accept that information which would fulfil part (b) of the Applicant's request is otherwise accessible to him.

25. The Commissioner therefore finds that NHS Highland was not entitled to rely on the exemption in section 25(1) of FOISA when it responded to either part of the Applicant's request.

Decision

The Commissioner finds that Highland Health Board (NHS Highland) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

As the Commissioner was not satisfied that information which would fulfil both parts of the Applicant's request was otherwise accessible to him using the links provided, he found that NHS Highland was not entitled to rely on section 25(1) of FOISA in responding to this request.

The Commissioner therefore requires NHS Highland to issue a further response to the Applicant otherwise than by relying on section 25(1) of FOISA, by **16 July 2021**.

Appeal

Should either the Applicant or NHS Highland 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.

Enforcement

If NHS Highland fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Highland has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Highland as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

1 June 2021

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.

...

- (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 –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info