

Decision Notice 058/2022

Recipients of a letter

Applicant: The Applicant

Public authority: Greater Glasgow and Clyde Health Board

Case Ref: 202101190



Scottish Information
Commissioner

Summary

NHS Greater Glasgow and Clyde were asked for information about the recipients of a specific letter. It notified the Applicant that it did not hold any information which would fulfil her request. The Commissioner investigated and was satisfied that no information was held falling within the relevant parts of the Applicant's request. He also found that NHS Greater Glasgow and Clyde had breached the statutory timescales when responding.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 April 2020, the Applicant made a request for information to Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde). The request covered various pieces of information relating to the manner in which a letter, prepared by a named doctor, was shared within NHS Greater Glasgow and Clyde. Only two aspects of the Applicant's request are being considered as part of this Decision Notice, and these are:
 - 3) *[named doctor] sent a copy of his letter to the entire gastroenterological department of Glasgow Royal Infirmary. How many people at Glasgow Royal Infirmary received a copy of the doctor's letter, either by Royal Mail, email or fax?*
 - 4) *Please provide basic information about the designation of those who received a copy of this letter, i.e. how many doctors received a copy, how many nurses etc?*
2. NHS Greater Glasgow and Clyde responded on 11 June 2020. In doing so, NHS Greater Glasgow and Clyde notified the Applicant, in line with section 17 of FOISA, that it did not hold recorded information which would fulfil parts 3) and 4) of her request as set out above.
3. However, in an effort to offer assistance to the Applicant, NHS Greater Glasgow and Clyde provided an explanation of the process followed when a letter, not marked for the attention of a specific staff member, is received in the Gastroenterology department. It also apologised for the delay in responding to the Applicant's request.
4. On 27 June 2020, the Applicant wrote to NHS Greater Glasgow and Clyde requesting a review of its decision as she considered its response deliberately oblique and misleading. The Applicant specifically expressed disappointment with NHS Greater Glasgow and Clyde's response to part 3) of her request. She also commented that the letter has been signed electronically, which meant that it was sent by email. As a consequence, she considered it disingenuous for NHS Greater Glasgow and Clyde to state that this information would not have been recorded as, she submitted, emails are always recorded and all emails sent and received can be retrieved.
5. The Applicant asked that NHS Greater Glasgow and Clyde take proper action to find out what email address the doctor's letter was sent to at Glasgow Royal infirmary, and to find out

how many people had access to that email address. The Applicant also asked exactly how many people had received copies of the doctor's letter.

6. NHS Greater Glasgow and Clyde notified the Applicant of the outcome of its review on 3 September 2021. NHS Greater Glasgow and Clyde upheld its original response that it held no recorded information which would fulfil parts 3) and 4) of the Applicant's request. NHS Greater Glasgow and Clyde outlined to the Applicant how the letter had been received and the process followed on receipt. It also explained that no recorded information was held which would identify or confirm the number of individuals who received a copy of the letter, other than those identified as receiving cc'd copies and the Applicant's own GP.
7. NHS Greater Glasgow and Clyde apologised for the delay in responding to the Applicant's requirement for review.
8. On 21 September 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of NHS Greater Glasgow and Clyde's review because she considered there to be no factual basis behind the statements made by NHS Greater Glasgow and Clyde in its response and rejected its application of section 17 of FOISA. The Applicant also expressed dissatisfaction with the time taken by NHS Greater Glasgow and Clyde to respond to her request.

Investigation

9. 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.
10. On 29 October 2021, NHS Greater Glasgow and Clyde was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Greater Glasgow and Clyde was invited to comment on this application and to answer specific questions. These related to the nature of the searches undertaken and the time taken to respond to both the request and requirement for review.

Commissioner's analysis and findings

12. 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 Greater Glasgow and Clyde. He is satisfied that no matter of relevance has been overlooked.

Section 17(1) – Notice that information is not held

13. Under section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
14. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must (unless it believes it has grounds to neither confirm nor deny whether information is held, under section 18 of FOISA) give an applicant notice in writing to that effect.

15. In her Application, the Applicant argued that NHS Greater Glasgow and Clyde should hold information covered by her request. It is the Applicant's view that whoever opened the letter in the Gastroenterology department should have returned it to the author, pointing out that there was no recipient named on the letter.
16. The Applicant does not consider that section 17 of FOISA is designed to cover such a situation: it is her view that it is meant to cover a clear-cut situation in which information was not and is not held.
17. In its responses to the Applicant, and during the investigation, NHS Greater Glasgow and Clyde maintained that it held no information falling within scope of the request.
18. In its submissions, NHS Greater Glasgow and Clyde detailed the individuals and departments who were asked to carry out searches to determine whether any relevant information was held falling within scope of parts 3) and 4) of the Applicant's request.
19. NHS Greater Glasgow and Clyde submitted that cc'd versions of the letter covered by the request were printed in hard copy, placed in envelopes and sent to recipients via its internal mail system. However, it explained that there was no recorded information to confirm this, as it did not maintain a log of physical mail sent either externally or through the internal mail system. Furthermore, it had no physical or electronic systems to track physical mail, which would enable a search to be undertaken. Similarly, there was no written procedure in place describing the arrangements in place for receiving mail into the Gastroenterology department, or for that matter any individual ward or department.
20. The process which would have been followed after the letter in question was received via internal mail by the Gastroenterology department of Glasgow Royal Infirmary was detailed by NHS Greater Glasgow and Clyde.
21. With regard to the Applicant's contention that the letter was sent by email, NHS Greater Glasgow and Clyde explained that the Gastroenterological department did not have a generic email address. It also confirmed that it did not have a fax machine either. The enquiries made at review stage indicated that the letter was sent by internal mail (i.e. in hard copy).

The Commissioner's findings

22. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information.
23. While it may be relevant as part of the exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
24. Having considered all of the relevant submissions and the terms of the Applicant's request, the Commissioner accepts that appropriate members of staff were asked to carry out searches for information falling within scope of parts 3) and 4) of the request. Any searches carried out appear to have been reasonable and proportionate in the circumstances.
25. Given the process followed by staff within Glasgow Royal Infirmary Gastroenterology department when internal mail is received and the fact that there is no electronic or physical

system in place to record the receipt of internal mail, the Commissioner is satisfied, on the balance of probabilities, that NHS Greater Glasgow and Clyde would not hold information specifically recording who received the letter concerned or their designation.

26. As a consequence, the Commissioner is satisfied that NHS Greater Glasgow and Clyde was entitled to notify the Applicant, in line with section 17 of FOISA, that it did not hold the information requested at parts 3) and 4) of her request.

Timescales

27. The Applicant expressed dissatisfaction with NHS Greater Glasgow and Clyde's alleged failure to respond within statutory timescales to both her request and requirement for review.
28. NHS Greater Glasgow and Clyde was invited to comment on these areas of dissatisfaction, and did so, accepting that it failed to comply with FOISA timescales in response to the Applicant's request, as its response was not issued until the 31st working day.
29. NHS Greater Glasgow and Clyde commented that the Applicant's request was received on 26 April 2020, at the start of the Covid-19 pandemic, and consequent resourcing issues within the FOI team this impacted its ability to deal with requests and reviews. It was offered the opportunity of providing further submissions on the impact of the pandemic but chose not to do so.
30. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
31. With regard to the Applicant's requirement for review, NHS Greater Glasgow and Clyde acknowledged that it did receive this on 27 June 2000.
32. However, as it was of the view that the Applicant had appealed to the Scottish Information Commissioner for a Decision regarding its failure to provide a response to the requirement for review, it did not progress with the requirement for review.
33. It only progressed this following an email from the Applicant dated 24 May 2021, in which she sought details of when a response to the requirement for review would be forthcoming. This led to the response to the requirement for review being issued on 3 September 2021.
34. NHS Greater Glasgow and Clyde accepted that it failed to comply with the statutory timescale when processing and responding to the Applicant's requirement for review.
35. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
36. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to the Applicant's request for information, or the Applicant's requirement for review, within 20 working days in each case, so the Commissioner finds that it failed to comply with sections 10(1) and 21(1) of FOISA. He notes that NHS Greater Glasgow and Clyde has apologised to the Applicant for these failures.

Decision

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

The Commissioner finds that by notifying the Applicant, in line with section 17 of FOISA, that it did not hold recorded information falling within scope of parts 3) and 4) of her request, NHS Greater Glasgow and Clyde complied with Part 1.

However, by failing to provide a response to the Applicant's request and requirement for review within the timescales laid down in sections 10(1) and 21(1) of FOISA, NHS Greater Glasgow and Clyde failed to comply with Part 1.

Given that NHS Greater Glasgow and Clyde did provide a response to the Applicant's request and requirement for review, the Commissioner does not require NHS Greater Glasgow and Clyde to take any action in respect of these failures, in response to the Applicant's application.

Appeal

Should either the Applicant 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
Head of Enforcement

2 June 2022

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

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.
- ...

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.
- ...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

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