



Decision Notice 075/2023

Calls to 999 service relating to medical abortions

Authority: Scottish Ambulance Service Board

Case Ref: 202200369

Summary

The Applicant asked the Authority for the total number of calls to its ambulance service and number of ambulances dispatched in response to those calls for medical abortions for all of 2018 and between 1 June 2020 and 31 May 2021.

The Authority informed the Applicant it did not hold the information.

The Commissioner investigated and was satisfied the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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 7 December 2021, the Applicant made a request for information to the Authority. He asked for the total number of calls to the Authority's 999 ambulance service and number of ambulances dispatched in response to those calls for medical abortions, for all of 2018 and between 1 June 2020 and 31 May 2021.

2. The Authority responded on 24 December 2021 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that the nature of the information requested meant it may or may not be recorded within a free text field in an electronic patient record, completed by an attending clinical crew, and it was unable to analytically search and compile information from such fields.
3. After asking the Authority to complete further searches using different search terms and chasing it for a response, the Applicant wrote to the Authority on 21 February 2022 requesting a review of its decision. Referring back to the intervening correspondence, the Applicant stated that he was dissatisfied with the decision because he had successfully obtained the same type of information through information requests to other ambulance services in the UK.
4. The Authority notified the Applicant of the outcome of its review on 22 March 2022, upholding its original decision. The Authority also cited advice from the Commissioner that information is not held if collating that information would require skill and complex judgement.
5. On 26 March 2022, 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 the Authority's review for the reasons set out above and he also disputed the Authority's position that compiling that information would require complex skill and judgement

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 2 May 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently 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. The Authority was invited to comment on this application and to answer specific questions. These related to how the Authority interpreted the Applicant's request, the searches it had carried out, its position that producing the information requested would require complex skill and judgement and whether it could obtain or collate the requested information from other related pieces of information.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

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

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.

11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard on the balance of probabilities. In determining where the balance lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the 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. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions

13. The Authority explained it interpreted the Applicant's information request as seeking the number of incidents its ambulance service attended due to complications experienced by patients having had a medical abortion.
14. The Authority stated its attending crews complete an electronic patient report form, the data of which is available for analysis. The form has sections for observations, treatment, specific conditions or significant factors, and the recording of these data may take the form of measurements, selecting from a drop-down list, completing a check-box, or entering free text.
15. The Authority explained there is no defined way of its attending crews recording if the incident attended is in relation to a medical abortion and confirmed it was therefore information it would not generally expect to hold.
16. As part of the investigation, the Authority was asked to explain what searches it had undertaken.
17. The Authority explained it examined the final diagnostic codes attending crews enter into electronic patient report forms, to understand whether any directly identified a medical abortion. The Authority stated those codes are "high level" and not specific enough to identify such incidents.
18. The Authority confirmed it had therefore conducted searches for "mifepristone", "misoprostal" (the two relevant drugs) and "abort" in the specific field category where any medication or substances taken by patients is recorded, but this returned no results.
19. The Authority explained the above searches were carried out on the electronic patient form data by its Business Intelligence team, as it has extensive knowledge of the data items held in that form and, as such, is best placed to advise on the information held by the Authority.
20. The Authority stated carrying out further searches on other free text fields would not give a true and accurate reflection of the number of incidents as requested. The Authority explained, from the data recorded, it would not be able to identify cases of an abortion or medical abortion.
21. To do this, the Authority submitted focused and skilled work between its Business Intelligence team and clinicians would be required to develop an accurate definition, potentially using a combination of many fields within the electronic patient report form.

22. To illustrate this, the Authority provided the following (non-exhaustive) examples:
- the phrases/words requested to be searched could be used in a number of contexts and could not be assumed to be a factor in ambulance attendance: for example, they could be preceded with “has not had”, “denies”, “awaiting” etc., or the patient might have disclosed that information but it was not the primary reason for them requesting an ambulance, which might result in incidents being counted which should not be;
 - the patient might not give this information to the attending crew, meaning that, even though it might be relevant, it would not be recorded in the electronic patient form;
 - the phrases/words requested to be searched could be worded differently or misspelt. Abbreviations are common in medical records; without proper research into the words and phrases used, a significant undercount of incidents is likely.
23. In summary, the Authority stated it could not provide the Applicant with the information he had requested using the method he suggested, without extensive work to understand the phrases and variables used, which would require considerable knowledge and skill from across the organisation.

The Applicant's submissions

24. The Applicant stated he disagreed with the Authority’s position that it did not hold the information he requested as he had successfully obtained this type of information from several other ambulance services in the UK and he was familiar with how the information he requested is compiled.
25. The Applicant also disputed the Authority’s argument that producing the information he requested required complex skill and judgement, because other ambulance services returned the information he requested without apparent difficulty and because doing a further search for the word “abortion” was less complex than the searches the Authority had already completed for “mifepristone” and “misoprostal”.

The Commissioner's view

26. Having considered all of the relevant submissions and the terms of the request and scope of the investigation in this case, the Commissioner accepts that the Authority interpreted the scope of the Applicant’s request correctly. He also accepts, on the basis of the submissions received, that it took adequate and proportionate steps in the circumstances to establish if the information was held.
27. The Commissioner notes the Authority’s reference to his [guidance on section 17 of FOISA](#)¹, particularly paragraph 46, which states that if compiling information in order to respond to a request would require skill and complex judgement, it is less likely the information can be said to held for the purposes of FOISA.
28. In [Decision 210/2013](#)², at paragraph 144, the Commissioner established that a public authority will hold information it holds the “building blocks” to generate the information and no complex judgement is required to produce it.

¹ [BriefingSection17Informationnotheld.pdf \(itspublicknowledge.info\)](#)

² [Decision 210/2013 | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

29. On balance, the Commissioner accepts that, while the Authority may hold such building blocks, complex judgement involving its Business Intelligence team and clinicians would be required to produce the information requested by the Applicant.
30. Given the explanations and submissions provided, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.
31. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case.
32. Whether a public authority *should* hold information which it does not hold is not a matter for the Commissioner to decide and neither can he, as noted in paragraph 23 in [Decision 050/2021](#)³, instruct a public authority to change its record keeping systems. In addition, it is always possible that different authorities, even ones which perform the same or substantially similar functions in different areas, will not necessarily record the same kind of information in the same way.
33. The Commissioner recognises that the Applicant has obtained the type of information he requested from the Authority from other ambulance services in the UK through similar information requests, including from one service unable to provide full information but which provided what it could with a commentary explaining the limitations of that information in terms of its accuracy, completeness and validity.
34. However, the Commissioner notes that the Applicant's request sought the "total number" of 999 calls to the Authority's ambulance service and the number of ambulances dispatched in response to those calls for medical abortions.
35. In the Commissioner's view, this is a request that seeks an answer based on a full data set and which cannot be answered where the underlying data are not recorded systemically or where the figure can only be ascertained by applying complex skill and judgement.
36. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Handling of request

37. The Commissioner notes that some time elapsed between the Authority's response to the Applicant's request and the receipt of a review requirement on which the Authority acted. While the Commissioner would acknowledge some margin for judgement on the Authority's part as to what constitutes a valid requirement for review, there was clearly a reasonable amount of correspondence passing between the Applicant and the Authority over this time, from which it should have been apparent that the Applicant was not content with the response he had received. Should similar situations arise in the future, the Commissioner would urge the authority to consider whether the Applicant requires more focused guidance (by way of advice and assistance, under section 15 of FOISA) to enable them to seek a review.

³ [Decision 050/2021 | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

Decision

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

Appeal

Should either the Applicant or the Authority 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

19 July 2023

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

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.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –

- (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
- and
- (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).