

Decision Notice



Decision 136/2010 Mr X and Greater Glasgow and Clyde Health Board

Start and end times of a patient's appointment

Reference No: 201000109

Decision Date: 5 August 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr X asked Greater Glasgow and Clyde Health Board (the Health Board) to supply information in relation to a number of matters including the identity of a patient and the start and end times of her appointment on a particular date.

The Health Board advised that the information requested on the hospital patient was exempt under section 38(1)(b) of FOISA, and upheld this decision after review. Mr X applied to the Commissioner for a decision and during the investigation, indicated that he wished to narrow his request to just the start and end times of the patient's appointment.

Following an investigation, the Commissioner found that the Health Board did not hold this information. In the circumstances, the Commissioner found that the Health Board had failed to deal with Mr X's request for information in accordance with Part 1 of FOISA, by failing to notify him, in line with section 17(1) of FOISA, that it did not hold the information he had requested. As Mr X was informed of this position during the course of the investigation, the Commissioner does not require any further action to be taken by NHS Greater Glasgow and Clyde.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement) and 17(1) (Information not held)

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

Background

1. On 15 October 2009, Mr X wrote to the Health Board requesting the following information with regard to a specified date:
 - (a) a comprehensive account of the whereabouts and actions of a named mental health officer between 4 pm and 8 pm



- (b) details relating to a female patient interviewed by a named doctor before that doctor interviewed Mr X's wife, including the patient's name, contact details and actual and expected times that this interview started and finished
 - (c) comprehensive details of all mobile phone calls between the named mental health officer and the named doctor made or received between 4pm and 8pm.
2. The Health Board responded on 11 November 2009, and in respect to parts (a) and (c) of Mr X's request, issued a notice in terms of section 17(1) of FOISA that it did not hold the information requested. In respect to part (b) of the request the Health Board stated that the information was exempt under section 38(1)(b) of FOISA as it was the personal data of another individual and disclosure would contravene the data protection principles.
 3. On 27 December 2009, Mr X wrote to the Health Board, requesting a review of its decision.
 4. The Health Board responded to Mr X's request for review on 19 January 2010. It upheld the decision that it did not hold parts of the information requested in parts (a) and (c) of his request, and that the information concerning a patient sought by part (b) was exempt from disclosure under section 38(1)(b) of FOISA.
 5. Mr X wrote to the Commissioner on 31 January 2010, stating that he was dissatisfied with the outcome of the Health Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 6. The application was validated by establishing that Mr X had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 18 February 2010, the Health Board was notified in writing that an application had been received from Mr X and was asked to provide the Commissioner with any information withheld from him. The Health Board responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Health Board, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Health Board was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested. The Health Board responded on 13 May 2010.



9. Mr X was then contacted by the investigating officer on 13 May 2010 for his comments on the case. His response of 17 May 2010 indicated that he only wished to pursue the part of his request concerning the start and end times of the patient's appointment. This was confirmed in further correspondence and so the remaining parts of his request are not considered any further in this decision.
10. On 2 June 2010, the investigating officer wrote to the Health Board asking for its comments and submissions in the light of the narrowed scope of the investigation.
11. The Health Board's response of 9 June 2010 indicated that, in fact, it did not hold the start and end times of the patient's appointment. It no longer sought to apply the exemption in section 38(1)(b) of FOISA to this information.
12. The Health Board provided the Commissioner with a copy of the relevant page of the appointment diary for the named doctor and explained that, although an appointment had been scheduled around the relevant time, it could not confirm the exact start and end times of this appointment.
13. With the Health Board's agreement, some of the information contained in the submissions made by it to the investigating officer, was communicated to Mr X, to enable him to make further comments on the case. Mr X provided his further comments on 27 June 2010.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr X and the Health Board and is satisfied that no matter of relevance has been overlooked.

Section 17 of FOISA (Notice that information is not held)

15. Section 17(1) of FOISA requires that where an authority receives a request for recorded information that it does not hold, it must give the applicant notice in writing that it does not hold the information.
16. In order to determine whether the Health Board dealt with Mr X's request correctly, the Commissioner must establish whether, at the time it received Mr X's request, the Health Board held any information which would fall within the scope of that request.
17. In explaining how it searched for the start and end times of the patient's appointment, the Health Board stated that it had looked at the diary of the named doctor for the date in question and that the diary contained outpatient appointments scheduled for 30 minute slots from 2pm to 4pm. The Health Board stated that it was possible that other people were seen after the last scheduled appointment.



18. The Health Board went on to explain that at the consulting room at the health centre in question a log was not maintained as to when appointments *actually* commenced and *actually* ended.
19. In addition to searching the doctor's diary the Health Board stated that it also searched the health records for the patient who was listed in the diary as having an appointment at 4pm on the afternoon in question. No note of the actual start and end times of the appointment were found anywhere in the patient's records.
20. Mr X believed the named doctor's diary would show an appointment for a female patient starting at 4.30pm. However, having reviewed the extract supplied by the Health Board, the Commissioner is satisfied that this is not the case. Mr X has also suggested that "discreet enquiries" might be made to the relevant patient. However, it falls beyond the Commissioner's remit to consider anything other than recorded information that was held by the Health Board at the time of Mr X's information request.
21. In all the circumstances, the Commissioner accepts that the Health Board has taken all reasonable steps to establish whether it held any recorded information about the start and end times of the interview with the patient seen immediately prior to Mr X's wife's interview on the specified day, and that no information has been found. The Commissioner accepts that this information is not held by the Health Board.
22. The Commissioner notes that section 17(1) requires that, in these circumstances, an authority must give notice to the applicant that it does not hold the requested information. However, in response to the part of Mr X's request of 15 October 2009 concerning the patient and the start and end times of her appointment, the Health Board indicated that the relevant information was being withheld. In so doing, it wrongly suggested that this information was actually held.
23. No notice in terms of section 17(1) was provided to Mr X in response to the part of his request seeking the start and end times of the appointment.
24. The Commissioner has therefore concluded that the Health Board failed to comply with Part 1 and, in particular, with section 17(1) of FOISA in responding to the relevant part of Mr X's request.
25. However as Mr X was informed of the position during the course of the investigation, the Commissioner does not require any further action to be taken by the Health Board.



DECISION

The Commissioner finds that Greater Glasgow and Clyde Health Board (the Health Board) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the part of Mr X's information request of 15 October 2010 that is considered in this decision.

The Commissioner found that the Health Board did not hold the information in question requested by Mr X. Since the Health Board had indicated in its responses to Mr X that the relevant information had been withheld (and so was actually held), he concluded that it failed to comply with Part 1 of FOISA by failing to provide Mr X with notice that it did not hold this information in terms of section 17(1) of FOISA.

In the circumstances, the Commissioner does not require the Health Board to take any action in respect of this breach.

Appeal

Should either Mr X or the Health Board wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
5 August 2010



Appendix

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.
- ...

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.
- ...