

Decision Notice 063/2021

Trials of anti-libidinal drugs for RSOs

The Applicant

Public authority: Glasgow City Council

Case Ref: 20200515



Scottish Information
Commissioner

Summary

The Council was asked for details of a programme involving anti-libidinal drugs for registered sex offenders in the Glasgow area.

The Council told the Applicant, in line with section 17 of FOISA, that it did not hold information capable of addressing the request. The Commissioner accepted that the Council did not hold the information sought.

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. The Applicant requested information from two public bodies which are covered by FOISA and which the Applicant believed were working together for a clinical trial involving anti-libidinal drugs for registered sex offenders (RSOs). This decision concerns the Applicant's request to only one of those bodies.
2. On 12 November 2019, the Applicant made a request for information to Glasgow City Council (the Council), following communications with the Council's press office. Insofar as seeking recorded information, the request read as follows:
 - 1) How many RSOs in the community are taking anti-libidinal drugs?
 - 2) How long has the trial been going?
 - 3) What assessment of its success or otherwise has been made and what were the results of that assessment?
 - 4) Have any of those RSOs reoffended?
 - 5) On what basis are RSOs selected for the programme?
 - 6) How long is the programme?
3. On 2 December 2019, the Council sought clarification on parts of the request from the Applicant and the Applicant responded.
4. On 11 December 2019, the Council responded to the request by notifying the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information he had requested. It explained that it was aware of the trial he referred to, but that the lead partner for this was NHS Greater Glasgow and Clyde (NHSGGC).
5. On 16 December 2019, the Applicant wrote to the Council, requesting a review of its decision on the basis that the Council had not provided the information he sought.
6. The Council notified the Applicant of the outcome of its review on 17 January 2020, upholding the original outcome that it did not hold information capable of addressing the request.

7. On 11 May 2020, 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 Council's review because he believed the information sought must be held. He was also unhappy that the Council's requests for clarification appeared to have prolonged its handling of the request unnecessarily.

Investigation

8. 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.
9. On 28 July 2020, the Council was notified in writing that the Applicant 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. The Council was invited to comment on this application and to answer specific questions. These related largely to the steps taken to ascertain what relevant information it held, but the Council was also asked to comment on its handling of the request.

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 Council. He is satisfied that no matter of relevance has been overlooked.

Whether information was held by the Council

12. 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.
13. 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 the authority to give the applicant notice in writing to that effect.
14. The Council does not dispute that it holds information relating to RSOs, as a responsible authority in terms of MAPPAs (Multi Agency Public Protection Arrangements). MAPPAs are a set of statutory partnership working arrangements under the Management of Offenders etc. (Scotland) Act 2005, placing a statutory duty on the responsible authorities in a local authority area to jointly establish arrangements for assessing and managing the risk posed by certain categories of offenders, including RSOs.
15. The request under consideration here, however, relates to a specific clinical trial, its subjects, the outcome and its evaluation. The Council explained that the trial was the responsibility of NHS GGC and only NHS GGC would hold the recorded information which could answer the Applicant's request.

16. As part of this investigation, the Council was asked to clarify its searches. It did so and confirmed it had carried out further checks. When responding initially, officers dealing with FOI requests made their enquiries with officers they believed were likely to have had relevant communications with NHS staff involved in the trials. It identified those officers, all of whom had confirmed that they held no relevant information.
17. During the investigation, the Council searched the email folders of all of these officers, as well as the shared drives they used in an Electronic Document Records Management System (EDRMs). Paper records were not checked as the information, if held, would reside in the EDRMs. The search terms used were “anti libidinal”, “anti-libidinal” and “libidinal”.
18. The Council concluded that it held no information capable of answering the Applicant’s questions. It was of the view that any information identified during these searches (of which it provided details) fell outwith the scope of the Applicant’s request.
19. The Council noted that it did not have any shared email systems with the NHS and submitted it would not be proportionate to search the email folders of other officers working with RSOs or to ask them to do so themselves. It explained that it had thousands of employees working in social care and hundreds working with such offenders, and it would not expect details of such a sensitive and confidential trial to have been shared with less senior staff than those approached, given their specialist responsibilities. In addition, the Council explained that the case records of the RSOs themselves could not be considered a reliable source of the requested information, as it would only hold there to the extent that the RSOs had volunteered that information themselves.

The Commissioner’s conclusions

20. 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 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 reasons offered by the public authority to explain why it does not hold the information. Ultimately 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).
21. Having considered all relevant submissions, taking account of the explanations of why the Council did not hold relevant data and submissions on the searches carried out, the Commissioner is satisfied the Council does not (and did not, on receipt of the Applicant’s request) hold the requested information.

Handling of the request

22. The Commissioner notes that the Council’s review outcome recognised that the clarification sought on 2 December 2019 was not required. The Council apologised for seeking the clarification. The clarification process does not, however, appear to have prolonged the Council’s handling of the request unduly and, taking account of the bank holiday on 2 December 2019, the request was responded to within the required 20 working days.
23. The Commissioner also notes that the Applicant first requested the information in question from the Council’s press office, on 30 July 2019. This was dealt with as a media enquiry, on a “business as usual” basis, rather than as a request under section 1(1) of FOISA. The Council has, however, acknowledged that this was a valid request for information. Unfortunately, the Applicant did not submit a requirement for review in relation to this request until 4 November 2019, by which time the Council was no longer under an obligation to carry

out a review. The Applicant then made a fresh request for the same information, on 12 November 2019.

24. While the Commissioner's concern here is the 12 November 2019 request rather than that of 30 July 2019, he would urge Scottish public authorities to be careful and ensure, when dealing with requests on a "business as usual" basis, that applicants remain aware of their statutory rights and are not denied the right to seek a review or apply to the Commissioner through the passage of time. This may be less likely to be an issue when dealing with an experienced professional user of FOI processes, but it should not be lost sight of nonetheless.

Decision

The Commissioner finds that Glasgow City Council 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 Council 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

29 April 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.

...

- (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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info