

# Decision Notice 154/2021

---

## **Trials of anti-libidinal drugs for RSOs**

---

**Applicant: the Applicant**

**Public authority: Greater Glasgow and Clyde Health Board**

**Case Ref: 202100269**



Scottish Information  
Commissioner

## Summary

---

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

NHSGGC informed the Applicant, in line with section 17 of FOISA, that no information capable of addressing the request was held. The Commissioner accepted that NHSGCC 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. The other is covered by *Decision 063/2021*, published on the Commissioner's website<sup>1</sup>.
2. On 9 May 2020, the Applicant made a request for information to Greater Glasgow and Clyde Health Board (NHSGGC), referring to a newspaper article which referred to a voluntary pilot scheme in Glasgow, whereby high-risk sex offenders would be given medication to reduce their libido. The information requested was:
  - 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. NHSGCC responded on 12 June 2020 by notifying the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information sought, explaining that (as this was a criminal justice issue) relevant information was more likely to be held by Police Scotland or the Criminal Justice Social Work function of Glasgow City Council.
4. On 18 June 2020 the Applicant wrote to NHSGCC, requesting a review of its decision and referring to previous assurances from NHSGCC that it did hold such information.

---

<sup>1</sup> [Decision 063/2021 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

5. Following an application to the Commissioner, which resulted in *Decision 161/2020*<sup>2</sup>, NHSGCC notified the Applicant of the outcome of its review on 25 January 2021. It apologised for the delay in responding. NHSGCC upheld its original response, confirming that no “trial” or “pilot” existed. It also acknowledged that its original response was not helpful and gave further advice in relation to each of the Applicant’s individual questions.
6. On 1 March 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 NHSGCC’s review because he believed that, irrespective of any “semantics” as to a “trial” existing, there was evidence of information being held by NHSGCC (details provided) in relation to some kind of relevant initiative.

## 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 5 March 2021, NHSGCC was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHSGCC was invited to comment on this application and to answer specific questions. These related to the Applicant’s comments supporting his view that information was held.

## Commissioner’s analysis and findings

---

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

### Whether information was held

11. 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.
12. 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.
13. In his application, the Applicant directed the Commissioner to the Glasgow MAPPA (Multi-Agency Public Protection Arrangements) Annual Report 2015/16 and in particular to the following:

**Objective 5 – Review implications of a health care managed pathway for anti libidinal medications and implementation of a redesigned referral process to forensic mental health services.**

*In terms of progression with this objective Forensic Mental Health Services have identified a prescriber and are currently working on the logistics of who administers the medication and how the physical health follow up checks are undertaken. The numbers for this type of medication are expected to be low and this process may be negotiated on a case by case basis. A protocol has been drawn up and is at the consultation stage before being ratified by Senior Health professionals.*

**Overall Progress on Objective 5:** *There has been significant activity around this area of business over the past year which will be taken forward and concluded in the forthcoming year.*

14. In its submissions, NHSGGC commented on the objective highlighted by the Applicant, explaining that it referred to the development of a healthcare managed pathway for anti-libidinal medications (ALMs) and a referral process, rather than a trial or study. NHSGCC stated that, while the development of a healthcare managed pathway was mentioned in subsequent annual reports, there was no recorded information of this being considered as a “trial”.
15. The Applicant also highlighted in his application follow-up checks (which he suggested would be dependent on analysis of the data produced during this first phase) and therefore “trial” would be an accurate description of “this project”. NHSGGC explained that the follow-up checks were necessary in order to monitor the health of patients receiving ALMs, particularly for known adverse effects. NHSGGC also confirmed that the small number of patients in the community who were prescribed ALMs are closely followed up by a Consultant Forensic Psychiatrist.
16. NHSGGC noted that it was the Applicant who had described the work as a “trial” and it could find no information to demonstrate the existence of anything of that nature. NHSGGC stated it can confirm there were RSOs within the community who have been, or were being, assessed for and prescribed ALMs, but searches conducted within NHSGGC and discussions with colleagues in the relevant service had not identified a trial, study or similar initiative, as described by the Applicant.
17. NHSGGC was asked during this investigation to set out in detail its searches for information capable of addressing the Applicant’s questions. NHSGGC identified (by post held) the individuals within service areas considered relevant to this request. To evidence its position, NHSGGC also supplied email correspondence relating to searches, which did not identify anything in the nature of a trial or pilot scheme.

*The Commissioner’s conclusions*

18. 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).

19. The Commissioner is satisfied that what is going on here cannot reasonably be recognised as a trial or similar exercise to assess the efficacy of ALMs as a means of managing offending behaviour. The Commissioner is satisfied from the way in which the request is framed that the Applicant's questions should all be approached in that context. Having considered all relevant submissions, the Commissioner accepts that the actual context here is different. ALMs are being administered, as and when needed, as part of the individual care plans of a small number of RSOs. The Commissioner is satisfied that this cannot be described as a trial, pilot study or anything of that nature.
20. Having considered all relevant submissions, therefore, the Commissioner is satisfied NHSGGC does not (and did not, on receipt of the Applicant's request) hold the requested information.

## **Decision**

---

The Commissioner finds that Greater Glasgow and Clyde Health Board 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 NHSGCC 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**

**5 October 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](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**