

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 November 2023

**Public Authority:** Business Services Organisation  
**Address:** 2 Franklin St  
Belfast  
BT2 8DQ

### **Decision (including any steps ordered)**

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1. The complainant has requested information from Business Services Organisation (BSO) relating to the Northern Ireland Electronic Care Record (NIECR). The BSO provided some of the requested information, however this was not provided in a timely manner within the statutory requirements of FOIA.
2. The Commissioner's decision is that on the balance of probabilities, the BSO does not hold any further information in relation to the request and as such, the BSO has complied with its obligations under section 1(1) of FOIA. However, the Commissioner finds that the BSO breached section 10 of FOIA, as it provided information outside of the 20-working day timeframe.
3. The Commissioner does not require the BSO to take any steps as a result of this decision.

## Background

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4. The complainant has raised a number of FOIA requests previously with the BSO and as a result of responses received has raised further questions. This notice follows on from IC-228172-N2K4, and IC-121566-H5T3<sup>1</sup> in which the Commissioner found that the BSO had failed to comply with sections 1 and 10 of FOIA.

## Request and response

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5. On 13 March 2023, the complainant wrote to the BSO and requested information in the following terms:

"This is a FOI Request for copies of BSO's \*current\*, not past or future, "Records of processing activities" (ROPAs) relating to the Northern Ireland Electronic Care Record (NIECR).

GDPR Article 30(2) requires a Data Processor to maintain ROPAs. As BSO is acting as a Data Processor for each of the NIECR participant organisations then BSO is required to have ROPAs covering such processing as detailed in Article 30(2)."

6. The BSO responded on 20 April 2023, It gave a list of five data controllers for the NIECR. The BSO also said that further information on GP services and Out of Hours GP services could be obtained from the local services directly. They explained that in relation to the DSA, they will act on behalf of each of the signatory organisations who feed data into the NIECR.
7. Following an Internal Review (IR) the BSO wrote to the complainant on 22 May 2023. It highlighted two points from the complainants IR request and provided further information in answer to those points.
8. During the Commissioner's investigation, he asked the BSO a series of questions in relation to the number of data controllers and or processors involved with the DSA and how they relate to the BSO's role as a data controller/processor; he also asked for the BSO to consider all aspects of the complainants IR request.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024593/ic-121566-h5t3.pdf>

9. Following several further correspondences from the Commissioner requesting clarification and further questions raised from the IR response, the BSO confirmed all relevant information had been disclosed.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 15 June 2023. They have said the main issues are around Data Controller/Data Processor relationships and a data sharing agreement. Their main issue is around the Data Controllers that were in place and their processors and sharing agreements at the time of their request. They believe the PA is being evasive. They concede the Data Protection side of their issues are now unlikely to be resolved (other than via legal proceedings).
11. The Commissioner considers that the scope of this case is to determine if, on the balance of probabilities, the BSO holds any further information in relation to the request.

### **Reasons for decision**

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#### **Section 1 – information held/not held**

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the BSO whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
15. The BSO has explained to the Commissioner that it 'has advised previously that there has been no signed Data Sharing Agreement in place. There was an attempt to address this in 2017, and we have signed agreements with several data controllers, but this process was not followed through with the GP Practices.' And 'This weakness has

been addressed, and the Data Sharing Agreement has been revised, agreed and issued to the HSC Trusts.'

16. The BSO further explained that: 'The requirements of UK GDPR Article 9(3) and DPA 2018 Section 11(1) are generally considered to be met by publicly funded/statutory health and social care organisations when fulfilling their statutory functions as set out in legislation e.g. Health & Social Care (Reform) Act (Northern Ireland) 2009 (as amended). However, as above, the BSO has now reviewed a DSA on behalf of, and in conjunction with, the relevant data controllers, and anticipate that this will be signed soon.'
17. The Commissioner asked the BSO what role Community Pharmacists and Optometrists played in NIECR to which they responded that both groups are identified as Data Processors and the system roll out is on the basis that they are processors.
18. The BSO has confirmed that the lawful basis for all data processing within the NIECR is Public Task as per Article 6 UK GDPR and Article 9 UK GDPR and section 10 and schedule 1 Part 1 Data Protection Act 2018.
19. The complainant has explained to the Commissioner that they feel the BSO has deliberately tried to frustrate their efforts to obtain information they have requested and stated, 'there are far more (alleged) Joint Data Controllers for the NIECR than these 322 mentioned by BSO – there appears to be somewhere in the order of 600+ (alleged) Controllers in total.' And 'No public information appears to exist that gives comprehensive details of even the categories of Data Controllers involved in NIECR, let alone a comprehensive list of the names of those Controllers – that was the reason why I raised this FOI Request with BSO in the first place.'
20. They went on to say that: 'In their FOI responses BSO have provided no information regarding Community Optometrists, Community Podiatrists, Community Pharmacists, or Independent Sector organisations. There are likely to be other categories of organisation, that I do not know about, that BSO also failed to provide information regarding.'
21. The BSO has explained that: 'After much discussion and redrafting we have now received the final guidance from our department of legal services and are now in a position to confirm that the Data Sharing Agreement is complete and ready to be issued to the Data Controllers. The final version identifies the NIECR Data Controllers as only the 5 Health and Social Care Trusts and GP Practices across Northern Ireland. The other system users (such as Community Pharmacists and Optometrists, both referenced in your letter) have been defined as Data

Processors and will be asked to sign a separate Data Processing Agreement. This means we can confirm that all categories of processing will apply to all Data Controllers.' And 'The provision of Primary Care in Northern Ireland is facing significant difficulties at the moment, with multiple GP practices closing and/or merging. As such, we believe that the link to the site quoted is more likely to be up to date than any list of GP Practices we could include in the Data Sharing Agreement.'

### **The Commissioner's findings**

22. The Commissioner has considered the complainant's concerns, along with the BSO's explanations for how much information is held and disclosed in relation to the request.
23. It is the Commissioner's view that the BSO has provided the information that it holds that falls within the request and has also provided some further information outside the scope of the request.
24. The Commissioner understands the complainant's concerns regarding the information that they want. However, FOIA only looks at information that is held by a public authority. There is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
25. The Commissioner is satisfied that the BSO has carried out adequate searches for information that relates to the request. It has also provided additional information, beyond the scope of the request, to try to help the complainant.
26. The Commissioner is therefore satisfied that on the balance of probabilities, the BSO does not hold any further information within the scope of the request and as such, has complied with section 1 of FOIA.

### **Procedural matters**

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#### **Section 10 – time for compliance**

27. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

28. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and "not later than the twentieth working day following the date of receipt".
29. From the evidence provided to the Commissioner, the BSO did not provide information within the scope of the request, within the 20-working day timeframe. The BSO therefore breached section 10(1) of FOIA.

## Right of appeal

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30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**