

Decision Notice 049/2022

Costs of Track and Trace

Applicant: The Applicant

Public authority: NHS National Services Scotland

Case Ref: 202100991



Scottish Information
Commissioner

Summary

NHSNSS was asked about the private sector firms involved in the delivery of the Track and Trace system. At review, NHSNSS supplied some information, but withheld other information on the basis that it was already published online.

The Commissioner found that not all of the information was already published online. (NHSNSS disclosed this information during the investigation.) He also found NHSNSS had failed to comply with the statutory timescales in FOISA when dealing with the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 15(1) (Duty to provide advice and assistance); 25(1) (Information otherwise accessible)

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 18 May 2021, the Applicant made a request for information to NHS National Services Scotland (NHSNSS). The request read as follows:

A number of private sector firms have been involved in the delivery of the Track and Trace system in Scotland.

Please could you provide me with the following information:
 - *The number of cases handled, or partially handled by, staff working for Barrhead Travel, Ascensos and Pursuit Digital to date. If possible, please provide a breakdown of cases handled by each firm, preferably by week (Part 1).*
 - *Details of the total amount that has been paid to each firm in relation to this service provision to date, and details of how much each firm, if known, may receive in the future (Part 2).*
2. On 28 June 2021, the Applicant wrote to NHSNSS requesting a review on the basis that it had failed to respond to his information request.
3. NHSNSS notified the Applicant of the outcome of its review on 28 July 2021. NHSNSS apologised for the delay in responding.
4. For Part 1, NHSNSS provided the Applicant with the data on case numbers handled or partially handled per firm until 31 March 2021, as that was when the contracts ended. NHSNSS explained why it did not hold a weekly breakdown of the figures.
5. NHSNSS applied the exemption in section 25(1) of FOISA to Part 2 of the request on the basis that all contracts were publicly available on the Public Contracts Scotland website. It gave the Applicant a link to the website. NHSNSS also provided the Applicant with links to its published quarterly expenditure reports for payments to suppliers over £25,000 covering April 2020 to March 2021.

6. NHSNSS explained that the financial information available does not solely relate to the Test & Protect case handling services that the companies provided to NHSNSS and does not represent the full range of work carried out as these companies were also involved in non-Test & Protect services.
7. On 10 August 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of NHSNSS's review because:
 - he did not receive a prompt response to his request
 - it was not clear to him (Part 2) which contracts or payments matched the services his request was about. As a consequence, he believed NHSNSS was wrong to apply the exemption in section 25 of FOISA and that it should have provided a more detailed response.

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. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHSNSS was invited to comment on this application and to answer specific questions. These related to the time taken to respond and its reliance on section 25 of FOISA.
10. NHSNSS replied on 25 November 2021 and offered to issue a revised response to the Applicant. On 1 December 2021, NHSNSS contacted the Applicant and disclosed more information. It also explained why NHSNSS had failed to respond on time.
11. Having received a revised response, the Applicant was asked by the investigating officer if he still wanted the Commissioner to issue a decision. The Applicant did not respond.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and NHSNSS. He is satisfied that no matter of relevance has been overlooked.

Section 1 – General Entitlement

13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
14. In his application, the Applicant said he was dissatisfied that NHSNSS had applied the exemption in section 25(1) of FOISA to Part 2 of his request. He suggested that it was not possible for him to establish what enclosures were relevant to his request.
15. NHSNSS noted that the Applicant requested information in relation to "Track and Trace." NHSNSS interpreted this as related to the "Test and Protect" service provided by NHS Scotland. "Track and Trace" is a service provided by The Royal Mail Group Ltd. and "Test

and Trace” is a service provided by NHS England. The Commissioner considers this to be a reasonable interpretation of the request.

16. NHSNSS applied section 25 of FOISA and directed the Applicant to two sources of information where it believed the information was available: the Public Contracts Website where he could search for the individual contracts (including the values of each contract) and NHSNSS expenditure reports for payments to suppliers over £25,000 for the time period covered by the request. In order to comply with its duty to provide reasonable advice and assistance under section 15(1) of FOISA, NHSNSS provided the URLs for the contracts, contact values and expenditures over £25,000 relating to the to the companies in question.
17. The only way NHSNSS could respond to the request for future payments was to direct the Applicant to the value of the contract, as NHSNSS did not hold future payment information and considered the contract award value was the best indicator of the maximum extent of total payments which could be made over the contract term. Therefore, NHSNSS believed that the section 25 exemption was correct for that part of the request.
18. NHSNSS told the Commissioner that it no longer wished to rely on section 25 of FOISA for the total amount paid to each firm to date. NHSNSS explained that it had now sourced the information that was requested for all three companies and had split the spend information by months. NHSNSS said it would now disclose that information to the Applicant (and did so on 1 December 2021).
19. The Commissioner accepts that the exemption in section 25(1) of FOISA applied to some, but not all, of the information requested. The Commissioner must therefore find that NHSNSS failed to comply fully with Part 1 of FOISA in its response to this part of the Applicant’s request.

Timescales

20. The Applicant was dissatisfied that NHSNSS had failed to respond to his initial request promptly. NHSNSS apologised for this and explained, with reference to the work being carried out on the pandemic, why the response had been delayed.
21. Section 10(1) of FOISA states that a Scottish public authority receiving a request which requires it to comply with section 1(1) of FOISA must comply promptly and within 20 working days. This is subject to qualifications which are not relevant in this case. While the Commissioner recognises the issues being faced by NHSNSS at the time of the request, given that it took over two months for NHSNSS to respond, NHSNSS did not comply promptly with the request for information. The Commissioner therefore finds that it failed to comply with section 10(1) of FOISA.

Decision

The Commissioner finds that NHS National Services Scotland (NHSNSS) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that not all of the information covered by Part 2 of the request was exempt from disclosure under section 25(1) of FOISA. This was a breach of section 1(1) of FOISA.

The Commissioner also finds that NHSNSS did not comply promptly with the request and therefore failed to comply with section 10(1) of FOISA.

The Commissioner does not require NHSNSS to take any action in respect of these failures in response to the Applicant's application.

Appeal

Should either the Applicant or NHSNSS 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.

Daren Fitzhenry
Scottish Information Commissioner

25 April 2022

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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info