

# Decision Notice 129/2022

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## Identity of GP with largest shareholding in practice

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**Public authority: Barclay Medical Practice**

**Case Ref: 202100905**



Scottish Information  
Commissioner

## Summary

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Barclay Medical Practice was asked to disclose the identity of the GP with the largest shareholding. It refused to provide this, arguing that this information was third party personal data, disclosure of which would breach the data protection principles.

As part of his investigation, the Commissioner considered what information the Medical Practice actually held. He concluded it did not hold the identity of the GP with the largest shareholding.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 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

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1. On 16 March 2021, the Applicant made a request for information to Barclay Medical Practice (the Medical Practice). The information request covered various pieces of information, only one of which is considered in this Decision Notice. The request under consideration here sought:  
*The identity of the largest shareholder GP.*
2. The Medical Practice responded on 29 June 2021. It refused to disclose the requested information as it considered this to be the personal information of GPs within the practice, applying the exemption in section 38(1)(b) (read in conjunction with section 38(2A)) of FOISA.
3. On 1 July 2021, the Applicant wrote to the Medical Practice, requesting a review of its decision as he did not accept that a breakdown of partner shares in the Medical Practice was exempt from disclosure.
4. The Medical Practice notified the Applicant of the outcome of its review on 14 July 2021. In doing so, it upheld its original decision to withhold the information on the basis that it was personal data. The Medical Practice went on to explain the process followed by GPs (the partners) when decisions were being taken: for decisions requiring a vote, each vote was equal.
5. On 26 July 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 the Medical Practice's review, because he did not accept that the law allowed it to withhold a breakdown of partner shares. The Applicant also expressed dissatisfaction with the time taken by the Medical Practice to respond to his request.

## Investigation

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6. 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.

7. On 18 August 2021, the Medical Practice was notified in writing that the Applicant had made a valid application. The Medical Practice was asked to send the Commissioner the information withheld from the Applicant. The Medical Practice provided information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Medical Practice was invited to comment on this application and to answer specific questions. These related to why the Medical Practice considered the information covered by the request to be third party personal data and why disclosure of this in response to the Applicant's request would breach the data protection principles under the UK General Data Protection Regulation.
9. During the investigation, further submissions were sought and received from both the Medical Practice and the Applicant. In part, these were sought because it became apparent that information meeting the terms of the Applicant's request might not, in fact, be held by the Medical Practice.

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Medical Practice. He is satisfied that no matter of relevance has been overlooked.
11. While the Medical Practice relied on the exemption in section 38(1)(b) and 38(2A) of FOISA for withholding information from the Applicant, for reasons which will become apparent, the Commissioner has considered it necessary to consider first whether in fact the Medical Practice actually holds (and held at the time of the request) recorded information which would fulfil the Applicant's request.

### **Information held by the Medical Practice**

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 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 the information an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
14. 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 reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

15. In its submissions, the Medical Practice explained that the GP partners operating in the practice did not own shares in the Partnership. The Commissioner was advised of how any capital and income from the partnership was split. It was noted that this was variable throughout the year and also noted that voting rights followed a different system from the division of capital and interest.

#### *Submissions from the Applicant*

16. During the investigation, the Applicant was invited to comment on the Commissioner's provisional view that information covered by his request did not appear to be held by the Medical Practice.
17. In his submissions on this matter, the Applicant submitted that the Medical Practice's submissions on the matter appeared to be largely speculative. He asserted that the end of year accounts relating to the Medical Practice were available at the time he made his complaint to the practice about its failure to respond to his request, and at the time they issued their reply.
18. For these reasons, the Applicant believed relevant information was held by the Medical Practice, at the time of his request.

#### *Commissioner's conclusions*

19. Having considered the submissions from the Medical Practice, and the Applicant, the Commissioner must focus on what recorded information the Medical Practice held at the time the Medical Practice received the Applicant's request, on 16 March 2021.
20. Having considered all relevant submissions, the Commissioner is satisfied that there is no such thing as a shareholding in the Medical Practice. The Medical Practice is a partnership and not a limited company. It is evident from the Medical Practice's submissions that capital and income is divided amongst the partners in a particular way which can vary throughout the year. However, decision-making, where a vote is called for, is by simple majority rather than on the basis of who has a greater split of capital and income. In practice, this means that no partner has any greater decision-making control over how the practice operates than any other.
21. In all the circumstances, therefore, the Commissioner is not satisfied that the Medical Practice can be said to be "held" in defined shares by the individual partners. If anything, for decision-making purposes, there would appear to be parity between the partners – and that is not consistent with any partner being the "largest" shareholder".
22. For that reason, the Commissioner must conclude that the Medical Practice did not hold recorded information which would fulfil the Applicant's request, at the time the request was received.
23. Because the Commissioner has concluded that no relevant, recorded information was held by the Medical Practice, he is not required to go on to consider whether the Medical Practice was entitled to rely on the exemption in section 38(1)(b) of FOISA.

#### **Timescales**

24. The Applicant was dissatisfied that the Medical Practice had failed to respond to his initial request within the statutory timescale laid down in FOISA.
25. The Medical Practice explained that it received the Applicant's request on 16 March 2021 but, due to pressures facing the Medical Practice, the request was misplaced and it only

became aware of the delay in responding when alerted by the Applicant. The Medical Practice confirmed that it emailed the Applicant on 28 June 2021 to apologise for overlooking his response and explain that it had been a genuine oversight on its part.

26. 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.
27. While the Commissioner acknowledges the circumstances leading to the delay in responding, given that it took over three months to respond, it is a matter of fact that the Medical Practice did not provide a substantive response to the Applicant's request for information within 20 working days. The Commissioner therefore finds that it failed to comply with section 10(1) of FOISA.

## **Decision**

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The Commissioner finds that Barclay Medical Practice (the Medical Practice) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the Applicant's request.

The Commissioner finds that by failing to notify the Applicant, as required by section 17 of FOISA, that it did not hold any information falling within scope of his request, the Medical Practice failed to comply with Part 1.

The Commissioner also finds that the Medical Practice failed to respond to the Applicant's request for information within the timescale laid down by sections 10(1) of FOISA.

Given that the Commissioner has found that the Medical Practice did not hold any recorded information which would fulfil the Applicant's request, he does not require the Medical Practice to take any action in relation to these failures, in response to the Applicant's application.

## **Appeal**

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Should either the Applicant or Barclay Medical Practice 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**

**28 November 2022**

## Appendix 1: Relevant statutory provisions

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### 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.

...

#### 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.

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