



Scottish Information
Commissioner
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Decision Notice 159/2024

Information relating to Raigmore Hospital

Authority: Highland Health Board
Case Ref: 202200652

Summary

The Applicant asked the Authority for information relating to Raigmore Hospital. The Authority refused to provide some of the information requested on the basis that it had provided it in response to previous requests and withheld other information on the basis that it comprised third party personal data. The Commissioner investigated and found that the Authority had failed to interpret the Applicant's request correctly and required it to reconsider the request and issue a new review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

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 28 February 2022, the Applicant made a multi-part request for information to the Authority relating to various matters at Raigmore Hospital. The full wording of the request can be seen at Appendix 2.
2. The Authority responded on 23 March 2022. The Authority withheld some of the information requested under section 38(1)(b) (Personal information) of FOISA and refused to disclose

the remaining information on the basis that this was available to the Applicant via its responses to previous information requests from them.

3. On the same day, the Applicant wrote to the Authority the same day requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because the Authority had failed to disclose any information within the scope of their request.
4. The Authority notified the Applicant of the outcome of its review on 25 April 2022, fully upholding its original decision.
5. On 8 June 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review for the reasons set out in their requirement for review and because the Authority's review outcome was late.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 24 July 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice of the application in writing and invited its comments.
8. The Authority provided submissions and the case was subsequently allocated to an investigating officer.
9. The investigating officer also sought the Applicant's comments on the case.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Authority and the Applicant.

Section 1(1) – General entitlement

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 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 by section 1(4).

Interpretation of request

13. The Commissioner has considered both the strict wording of the original five-part request (reproduced in full in Appendix 2). He is satisfied that the nature of the information the Applicant was seeking is clear from reading the request.
14. It appears to the Commissioner that, in its interpretation of the request, the Authority did not fully engage with the specific detail of each individual request.

15. The Authority appears to have accepted this. During the investigation, the Authority stated that it should have issued a notice, under section 17(1) (Information not held) of FOISA, for part 1 of the request and also identified that:
 - only some of the information that it refused to provide to the Applicant on the basis it had provided it to the Applicant as part of responses to previous information requests had actually been disclosed
 - in relation to part 3, it considered that “were any such information to be held” this would be exempt in terms of section 38(1)(b) of FOISA
 - in relation to parts 4 and 5 of the request, it had failed to adequately answer these parts despite being in a position to do so
 - where it had applied the exemption at section 38(1)(b) of FOISA, this should have been better explained to the Applicant.
16. Further to the Authority’s observations above, the Commissioner notes that:
 - each part of the request relates to a 2011-2020 time period (as whole), which is not apparent in other requests from the Applicant that he has seen (or fully covered in responses provided previously by the Authority)
 - the “pay band” element of the Applicant’s request is not specifically addressed in the Authority’s initial or review response or in its submissions, which suggests that this was not fully considered
 - the Authority’s submission in respect of part 3 (“were any such information to be held”) appears to suggest searches were not carried out for this element of the request.
17. The Commissioner recognises that this request is part of a long-standing series of requests from the Applicant related to Raigmore Hospital (which is reflected in detail in [Decision 065/2024¹](#)).
18. While this history might have made it more challenging for the Authority to determine whether the information requested in this case had been provided previously, the Commissioner does not, as rehearsed earlier, consider that the Authority fully engaged with the specific detail of each individual request in this case.
19. In all of the circumstances, the Commissioner considers that the Authority failed to accurately interpret and respond to the Applicant’s request.
20. The Commissioner therefore finds that the Authority failed to comply with section 1(1) of FOISA and, in doing so, provided an incomplete response to the Applicant. He therefore requires the Authority to carry out a fresh review and to issue a new review outcome to the Applicant.

Handling of the request

21. The Applicant was dissatisfied with the time taken by the Authority to respond to their requirement for review.

¹ https://www.foi.scot/sites/default/files/2024-05/Decision065-2024_3.pdf

22. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to qualifications which are not relevant in this case.
23. The Authority's review outcome was one day late, which it recognised and apologised for in its submissions to the Commissioner.
24. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that by failing to interpret the Applicant's request correctly, the Authority failed to comply with Part 1 (in particular, section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner therefore requires the Authority to carry out a fresh review and to issue a new review outcome to the Applicant, by **16 September 2024**.

The Commissioner also finds that the Authority failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA.

Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action in response to the failure to respond within timescales.

Appeal

Should either the Applicant or the Authority 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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Cal Richardson
Deputy Head of Enforcement

1 August 2024

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;

- (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
- (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

Appendix 2 – 28 February 2022 request

Dear NHS Highland, From the Fol requests submitted so far by [the Applicant], it can be concluded (among other things) that:

To maximize income on the Raigmore Hospital site to help with its financial issues, your organization diverted to your hospital and other NHS Highland facilities nearly 99% (i.e., £678,398.15) of the £686,403.71 collected from the residents' pockets (from some residents' pockets in particular).

For the financial period 2011-2020 (the only financial period that [the Applicant] managed to obtain from your organization through your Scottish FOIA), please provide:

1. Full name and job position of the individuals within and outwith your organization (for example, from your Scottish Government, Scottish Parliament, Etc.), that instructed your organization to divert the £678,398.15 to run your Raigmore Hospital and other NHS Highland facilities? (Your mates down in St Edinburgh are not helpful. They do not appear to be willing to provide that information.)
2. Full name, job position and pay band (including pension contributions, benefits, donations, awards, expenses, allowances, and bonuses that they have received on top of their salaries) of the individuals within and outwith your organization (for example, from your Scottish Government, Scottish Parliament, Etc.) that decided how much money must be collected from the residents' pockets? (The full names of your mates [named individual] and [named individual] were already provided in request 28.)

For the financial period 2011-2020, and for each named individual, please provide:

3. How much of their salaries (including pension contributions, benefits, donations, awards, expenses, allowances, and bonuses that they have received on top of their salaries) have those individuals diverted or donated to run your Raigmore Hospital and other NHS Highland facilities?
4. Besides your mates [named individual] and [named individual], which of those individuals are still employed by your NHS Highland (or still at the Scottish Government, Scottish Parliament. Etc.)?
5. What is their current job position and pay band (including pension contributions, benefits, donations, awards, expenses, allowances, and bonuses that they receive on top of their salaries)?