



Decision Notice 178/2024

End of life care plans, treatments or protocols including euthanasia plans

Authority: Scottish Ambulance Service Board
Case Ref: 202201350

Summary

The Applicant asked the Authority for information about any “end of life care” plans, treatments or protocols including euthanasia plans. The Authority stated that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 23 September 2022, the Applicant made the following request for information to the Authority:

Please provide all and any recorded information pertaining to any "End of life care" plan(s) or treatment(s) or protocol(s) including details of voluntary, none-voluntary and involuntary Euthanasia plans, if held, by [the Authority] for members of the British public - particularly those who are deemed disabled, elderly or nurses of [the Authority] itself.

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

2. The Authority responded on 19 October 2022. It informed the Applicant, in terms of section 17 of FOISA, that it did not hold the information requested.
3. On 2 November 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they believed, upon other information available to them, that there was a strong possibility that information may be held and, if so, they requested that the information was disclosed.
4. The Authority notified the Applicant of the outcome of its review on 23 November 2022, fully upholding its original decision.
5. On 28 November 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant wished to verify whether there was any recorded information held falling within the scope of their request and, if so, they wished that information to be disclosed.

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 9 December 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The Authority provided its initial comments on 16 January 2023 and confirmed, on 2 April 2024, that there was no change to its position. The case was subsequently allocated to an investigating officer.
9. Following consideration of the Authority's initial comments, the Investigating Officer invited the Authority to provide further comments and to answer specific questions. These focussed on the searches undertaken by the Authority to establish whether it held any information falling within the scope of the request.

Commissioner's analysis and findings

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

Does the Authority hold any relevant information?

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 public 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 by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

13. 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 of probabilities 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.
14. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and their application, in which they provide reasons why they consider the Authority may hold the information requested.
15. In its submissions to the Commissioner, the Authority maintained that it held no information falling within the scope of the Applicant's request. The Authority explained that although it had access to the Key Information Summary (KIS), which is managed by a patient's general practitioner, it confirmed that it did not hold or have responsibility for that information.
16. The Authority explained and provided evidence of the searches carried out at review stage, in support of its position that it held no relevant information: It explained that the Palliative and End of Life Care Nurse Consultant (who was the subject matter expert in end of life care within the Authority), had checked with the Authority's Clinical Effective Leads (who have oversight of patient care plans throughout the organisation), and had confirmed that the information requested was not held. Given the combined knowledge and expertise of this team, the Authority was satisfied that they would be aware if a plan relating to euthanasia existed.

The Commissioner's views

17. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
18. The Commissioner notes that the Applicant believes the Authority may have held the information requested. The Authority has explained why it does not hold that information.
19. The Commissioner also notes that euthanasia is illegal in Scotland and, as such, he considers it is highly unlikely that the Authority (or indeed any health authority in Scotland for that matter) would hold end of life care plans which included plans for euthanasia in any of the circumstances described in the Applicant's request. Given the nature of the information requested, together with the explanations and supporting evidence of searches provided by the Authority, the Commissioner is satisfied that the arguments put forward by the Authority sufficiently explained why it did not hold the information requested.
20. In the circumstances, therefore, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request. He finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

The Commissioner finds that the Authority 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 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.

David Hamilton
Scottish Information Commissioner

28 August 2024