

Decision Notice

Decision 029/2015: Mr X and Lothian Health Board

Accident and incident forms for NHS staff within HM Prison Edinburgh

Reference No: 201402585

Decision Date: 9 March 2015



Scottish Information
Commissioner

Summary

On 28 June 2014, Mr X asked Lothian Health Board (NHS Lothian) for information about incidents and accidents forms completed by health care staff within HM Prison Edinburgh (HMP Edinburgh) and any such reports submitted in 2012, 2013 and 2014.

NHS Lothian provided copies of the reports it held, after redacting some names. Mr X believed that more reports should be available and, following a review, applied to the Commissioner for a decision. Following an investigation, the Commissioner was satisfied that NHS Lothian did not hold any further information. She did not require NHS Lothian to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 June 2014, Mr X made a request for information to NHS Lothian:

‘I wish to know if there have been any risk assessments as stated in ‘Violence and Aggression to Staff in Health Services’ by the Health and Safety Executive (2003), carried out for healthcare staff within HMP Edinburgh in 2012, 2013 until the present day (request 1)

If these assessments have been carried out I would like a copy of the assessments for the years 2012, 2013 and 2014 (request 2)

I wish to know if there is an incidents and accidents form which must be completed by health care staff within HMP Edinburgh in accordance with NHS Incident Management Policy (request 3)

If such a completed document exists, I would like a copy of any reports submitted in 2012, 2013 and 2014 (request 4).’

2. NHS Lothian responded on 4 August 2014. NHS Lothian provided an answer (‘yes’) to request 1. For request 2, NHS Lothian provided the assessment with names redacted. For requests 3 and 4, NHS Lothian confirmed that incidents are recorded on its risk management system (DATIX), and provided details of incidents with names redacted in terms of section 38(1)(b) of FOISA.

3. On 16 August 2014, Mr X wrote to NHS Lothian requesting a review of its decision on the basis that he believed more information must be held by NHS Lothian for request 4. He had only been provided with eight pages in relation to this request and believed that there must have been more than eight accident or incident reports completed since 2012.

4. Having received no response to his requirement for review, Mr X applied to the Commissioner for a decision¹ in terms of section 47(1) of FOISA.
5. NHS Lothian notified Mr X of the outcome of its review on 15 October 2014. NHS Lothian confirmed that it held no further incident reports other than those already provided to Mr X.
6. On 1 November 2014, Mr X wrote to the Commissioner. Mr X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X stated he was dissatisfied with the outcome of NHS Lothian's review as he believed more information was held by NHS Lothian that fell within request 4.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Lothian was invited to comment on Mr X's application and answer specific questions, including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
9. During the investigation, Mr X provided what he regarded as comparable figures from another health board for the number of incident reports. These figures were for the whole of the other health board's area. NHS Lothian agreed to provide Mr X with figures for *total incidents* in NHS Lothian (not just HMP Edinburgh, as he originally requested) for 2012, 2013, and 2014.
10. On 9 January 2015, Mr X was informed by the investigating officer that NHS Lothian had interpreted his request to relate only to incidents involving violence and aggression. He was asked if he wanted information only about these incidents, or all incidents within HMP Edinburgh. Mr X did not indicate whether he wished information from all incident reports. The investigating officer asked NHS Lothian to disclose to Mr X further redacted incident reports from within the time period that did not involve violence and aggression, in case this was what Mr X had intended. NHS Lothian did so.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all relevant submissions, or parts of submissions, made to her by both Mr X and NHS Lothian. She is satisfied that no matter of relevance has been overlooked.

Section 1(1) of FOISA – General entitlement

12. 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. This is subject to qualifications, but these are not applicable in this case.
13. NHS Lothian's review stated that it had provided all the information it held covered by Mr X's request. Mr X questioned this, particularly in relation to what he regarded as the small

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201402354.aspx>

amount of information provided by NHS Lothian. The question for the Commissioner is whether NHS Lothian complied with section 1(1) of FOISA in responding to Mr X's request, or whether it held any further recorded information that fell within Mr X's request.

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 this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information (or, in this case, more information) is not held.
15. NHS Lothian was asked to explain the extent of any searches in this system and why these would have been likely to locate any information covered by the request, and which sets of records or data resources were included in the searches.
16. NHS Lothian confirmed that all information was held on its risk management system, DATIX. It explained that all incident and accident forms were completed on DATIX, and the information provided to Mr X was extracted from DATIX. The searches were done by calendar year and covered the following:
 - Person affected
 - Date reported
 - Division
 - Management Team
 - Service Area
 - Site
 - Department
 - All staff incidents
 - Category (or sub category if required)
17. In terms of any guidance issued to staff as to what should be reported on DATIX regarding accidents or incidents, NHS Lothian explained that the applicable policy at the time of the request was its Incident Management Policy and Procedure, which required staff to record or report on DATIX all incidents and accidents of the type referred to by Mr X.
18. NHS Lothian provided details of the staff consulted in relation to Mr X's request.
19. Mr X expected there to have been more incidents/accidents in HMP Edinburgh, given the size of HMP Edinburgh and the timescale (3 years). NHS Lothian commented that staff are actively encouraged and supported to report through various routes, including at induction, the management chain and as part of NHS Lothian policy requirements.
20. NHS Lothian explained to the investigating officer that it had only provided Mr X with information about incidents which involved violence and aggression. NHS Lothian said that it had identified information about other incidents (making a total of 14 incidents), but thought Mr X had wished only those involving aggression or violence. NHS Lothian disclosed the other incidents, with personal data redacted, during the Commissioner's investigation.
21. Having considered all the relevant submissions, Commissioner accepts that NHS Lothian has taken adequate and proportionate steps to establish the information it held which fell

within the scope of Mr X's request. In reaching this conclusion, the Commissioner has taken into account the following:

- the information falling within the request is held by NHS Lothian in a way that the NHS Lothian describes as a specific, identifiable and searchable database (DATIX);
- the requested information would not be held otherwise than on DATIX
- the actual searches undertaken by NHS Lothian to assess the information it held seem to be reasonable and proportionate and likely to identify relevant information
- staff involved in searching for the information had experience and knowledge of the subject, reducing the likelihood of searches being faulty or relevant information being overlooked
- there is a requirement to report such incidents, increasing the likelihood that such incidents will be reported and recorded

22. Mr X may have intended his request to go wider than reports of incidents involving violence and aggression; however, he has not indicated so to the Commissioner. The Commissioner takes the view that whilst it is understandable that NHS Lothian interpreted his request as limited to reports involving violence and aggression (given the wording of request 1), on a literal reading, request 4 covers all incident reports. During the investigation, NHS Lothian agreed to provide Mr X with the remaining incident reports. Given that all reports have been provided, and given that Mr X has not commented on the interpretation of his request, the Commissioner will not make a finding on the correct interpretation of the request.

23. The Commissioner is satisfied on the balance of probabilities that Mr X has now been provided with all of the information held by NHS Lothian which falls within the scope of his request, and finds that NHS Lothian complied with Part 1 of FOISA in responding to his request.

Decision

The Commissioner finds that NHS Lothian complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr X.

Appeal

Should either Mr X or NHS Lothian 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.

Margaret Keyse
Head of Enforcement

9 March 2015

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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info