

Decision Notice 058/2020

Qualifications and experience of named doctors

Applicant: The Applicant

Public authority: Forth Valley NHS Board

Case Ref: 201901400



Summary

NHS Forth Valley was asked for a range of information about the qualifications of two named doctors. The Commissioner investigated and found that NHS Forth Valley had failed to identify and disclose all the information falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 12(1) (Excessive costs of compliance); 17(1) (Notice that information is not held); 21(1) (Review by a Scottish public authority); 74(1)(a)(ii) (Giving of notice etc.)

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 30 May 2019, the Applicant made a request for information to Forth Valley NHS Board (NHS Forth Valley). He asked:
Please provide clarification on the knowledge, skill, training education and expertise in Autistic Spectrum Disorders (ASD) and in particular Asperger's Syndrome (AS) on the parts of (a) [Dr A] and (b) [Dr B] including in particular with respect to expert advice on the modification of generic risk assessment tools (Stroke and Acute 2007 [SA07] and the level of Support/Case Management Inventory [LS/CMI]) for individuals with AS.
In particular I am seeking the following specific information from each of these names:
 - (i) *all specific training in respect of ASD/AS including when and where this was obtained;*
 - (ii) *whether they are recognised as having expertise in ASD/AS by (a) NHS Scotland; (b) National Autistic Society Scotland or (c) Scottish Autism.*
 - (iii) *the number of individuals with AS with whom each has worked professionally (a) generally and (b) carrying out risk assessments including specifically the SA07 and LS/CMI.*
2. NHS Forth Valley responded on 28 June 2019. It stated that the requested information was personal information and exempt from disclosure under section 38(1)(b) of FOISA.
3. On 1 July 2019, the Applicant wrote to NHS Forth Valley requesting a review of its decision. He did not consider that the exemption applied and argued that the information should be disclosed.
4. NHS Forth Valley notified the Applicant of the outcome of its review on 30 July 2019. It now informed the Applicant, in line with section 17(1) of FOISA, that it did not hold the information he had asked for. NHS Forth Valley also informed the Applicant that it can only provide information in relation to NHS Forth Valley and not in relation to NHS in Scotland, the National Autistic Society Scotland or Scottish Autism. NHS Forth Valley advised the Applicant that Dr B is an accredited National Assessor with the Risk Management Authority.

5. On 20 August 2019, the Commissioner received an application from the Applicant asking for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of NHS Forth Valley's review: he considered it highly improbable that NHS Forth Valley did not hold information. He also considered that NHS Forth Valley had failed to respond to his request for review within the statutory timescales.

Investigation

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 2 October 2019, NHS Forth Valley was notified in writing that the Applicant had made a valid application 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. NHS Forth Valley was invited to comment on this application on 5 November 2019 and to answer specific questions on the searches it had undertaken and on the way in which it had handled the request. NHS Forth Valley responded on 20 November 2019.
9. NHS Forth Valley was subsequently asked to conduct further searches, following which it identified and disclosed some information falling within scope of one part of the request and told the Commissioner that it considered it would incur excessive costs to provide other information.

Commissioner's analysis and findings

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

Information held by NHS Forth Valley

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. This is 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. These qualifications do not apply in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
13. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what NHS Forth Valley ought to hold, but he can consider whether NHS Forth Valley took adequate, proportionate steps to establish what information, if any, they held and which fell within the scope of the Applicant's request.

Searches

14. NHS Forth Valley stated that, as part of its review of the Applicant's request, the personal files of both individuals were requested and it was established that the information was not

held. NHS Forth Valley provided the Commissioner with a copy of the individual's qualifications listed in their application forms.

15. NHS Forth Valley stated that the individuals were asked for input when responding to the request and it provided copies of their responses.
16. NHS Forth Valley considered that the personal files of the individuals were the relevant locations to search.
17. NHS Forth Valley submitted that details of any qualifications would be held within the member of staff's application form. It confirmed that the application forms did not specify the qualification that the Applicant is seeking; however, it recognised that this would be included as part of the core training of individuals.
18. NHS Forth Valley was asked to conduct further searches, specifically of the training records of the two individuals. Following this, NHS Forth Valley identified that one of the individuals had attended a training course identified by the Applicant. NHS Forth Valley also explained that it would incur excessive costs to search and locate the information requested in part (iii) of the request.

The Commissioner's conclusions

19. Having taken account of all the relevant submissions and the terms of the request, the Commissioner is satisfied that NHS Forth Valley has now taken adequate, proportionate steps during the investigation to establish what information fell within the scope of the request. He has considered the reasons provided by NHS Forth Valley which explains why it holds limited information, and why it would have to conduct extensive searches to locate the information requested in part (iii) of the request.
20. The Commissioner is satisfied that NHS Forth Valley has now identified and provided the information it holds falling within scope of parts (i) and (ii) of the request. However, given NHS Forth Valley failed to take adequate steps to identify, locate and provide the information falling within scope of the Applicant's request when responding to his request and request for review, the Commissioner finds that NHS Forth Valley failed to comply fully with section 1(1) of FOISA.
21. The Commissioner notes that, during the investigation, NHS Forth Valley issued the Applicant with a new response to part (iii) of his request. It asked him to specify the timeframe of his request to allow it to check whether complying with that part of his request would be excessive in terms of section 12(1) of FOISA.
22. Given that NHS Forth Valley's current interpretation of part (iii) of the request differs so markedly from its review response, if the Applicant is dissatisfied with this new response, he can submit a new application to the Commissioner.

Timescales

23. The Applicant expressed dissatisfaction with the time taken by NHS Forth Valley to respond to the requirement for review. He believed that NHS Forth Valley had replied outwith the 20 working day period allowed by section 21(1) of FOISA.
24. The Applicant's request for review is dated 1 July 2019. It was sent by post.
25. NHS Forth Valley acknowledged receipt of the request for review, by letter, the following day, so it is clear that NHS Forth Valley received the request for review that day.

26. The review response is dated 30 July 2019 – this was the final day NHS Forth Valley could have responded while complying with section 21(1). The response was sent by post. The Applicant states that he received the review response on 2 August 2019.
27. Public authorities are required – section 21(4) – to give the notice within 20 working days. In terms of section 74(1)(a)(ii) of FOISA, any reference to a notice being given is to be construed as a reference to its being posted. It is, therefore, the date of posting which is important in deciding whether a public authority has complied, not the date on which the notice was received by the applicant.
28. Consequently, the Commissioner is satisfied that NHS Forth Valley complied with the timescale in section 21(1) of FOISA.

Decision

The Commissioner finds that Forth Valley NHS Board (NHS Forth Valley) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant by:

- failing to identify information falling within the scope of the request until after the investigation commenced
- notifying the Applicant that it did not hold any information falling within the scope of his request

Given that NHS Forth Valley disclosed information during the investigation, and provided the Applicant with a new response relating to part (iii) of his request, the Commissioner does not require NHS Forth Valley to take any action in respect of these failures in response to the Applicant's application.

Appeal

Should either the Applicant or NHS Forth Valley 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

15 June 2020

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.
- ...

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- ...

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.
- ...

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.
- ...

74 Giving of notice etc.

(1) In this Act, any reference to –

(a) a notice being given is to be construed as a reference to its being –

...

(ii) posted; and

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info