

Decision Notice

Decision 090/2014 Mr X and Forth Valley NHS Board

Patient and doctor consultations

Reference No: 201400539

Decision Date: 24 April 2014



Scottish Information
Commissioner

Summary

On 7 December 2013, Mr X asked Forth Valley NHS Board (NHS Forth Valley) for information relating to patient and doctor consultations laid out not by NHS Forth Valley but by NHS UK. NHS Forth Valley provided Mr X with some information from a Scottish Government website, but did not explain that NHS Forth Valley itself did not hold any information covered by his request.

Following an investigation, the Commissioner found that NHS Forth Valley had failed to provide Mr X with the required notice that it did not hold the requested information. However, she did not require NHS Forth Valley to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 7 December 2013, Mr X wrote to NHS Forth Valley requesting (amongst other matters not the subject of this decision) any documentation relating to patients' and doctors' consultations.
2. On 18 December 2013, NHS Forth Valley asked Mr X to provide an explanation of his request.
3. On 21 December 2013, Mr X stated that he sought any documentation relating to patient and doctor consultations, and that he required information "laid out not by NHS Forth Valley but by the NHS of the UK", including:
 - where consultations should take place;
 - who should be present during any consultation;
 - whether patients are entitled to private consultations.
4. NHS Forth Valley responded on 27 January 2014 and provided Mr X with a weblink to a Scottish Government webpage.
5. On 1 February 2014, Mr X wrote to NHS Forth Valley requesting a review of its decision, explaining that he did not have access to the internet and could not view the referenced webpage.
6. NHS Forth Valley notified Mr X of the outcome of its review on 14 February 2014. It upheld his request for review and provided him with a printed copy of the referenced webpage.
7. On 9 March 2014, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Forth Valley's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X did not consider that the information he had received was relevant to his request.
8. The application was validated by establishing that Mr X made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the

authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

9. On 24 March 2014, the investigating officer notified NHS Forth Valley in writing that an application had been received from Mr X, giving NHS Forth Valley the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). NHS Forth Valley was asked to justify its reliance on any provisions of FOISA it considered applicable, and in particular to explain the steps it had taken to identify and locate any information falling within scope of the request.
10. NHS Forth Valley responded, providing submissions in support of its position that it did not hold any information.

Commissioner's analysis and findings

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

Is any relevant information held by NHS Forth Valley?

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 certain 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.
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 the information which an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
14. In its submissions, NHS Forth Valley stated that it did not hold any information about NHS UK's policies or practices relating to patients and doctors consultations. It provided evidence to show that it had carried out searches without finding any relevant information.
15. The Commissioner accepts, on the basis of the submissions received from NHS Forth Valley, that it does not hold any information falling within the scope of Mr X's request, as clarified on 21 December 2013.
16. The Commissioner notes that, in its review response to Mr X, NHS Forth Valley provided him with a printed copy of a Scottish Government webpage, but did not make it clear that NHS Forth Valley did not hold this information in its own right, or give notice (in line with section 17(1) of FOISA) that it did not hold any information covered by the terms of Mr X's request.
17. The Commissioner has therefore concluded that NHS Forth Valley did not hold any information falling in scope of Mr X's request, but failed to give proper notice to him in terms of section 17(1) of FOISA. The Commissioner does not require NHS Forth Valley to take any further action in relation to Mr X's request, but will expect it to note the finding when responding in the future to requests for information.

Decision

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

The Commissioner finds that NHS Forth Valley failed to give proper notice to Mr X, in terms of section 17(1) of FOISA, that it did not hold the information he had requested. The Commissioner does not require NHS Forth Valley to take any action with respect to this failure.

Appeal

Should either Mr X or Forth Valley NHS Board 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
24 April 2014

Appendix

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.

...

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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