

Decision Notice



Decision 116/2009 Mr Q and Greater Glasgow NHS Board

Record of events on a particular day at a medical practice

Reference No: 200900767

Decision Date: 9 October 2009

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Q requested from Greater Glasgow NHS Board (the Board) details of events that took place at a particular medical practice on a particular day. The Board responded by referring Mr Q to earlier discussions which it stated had addressed his concerns. Following a review, where the Board advised Mr Q that the information he sought was either exempt under section 38 of FOISA or not held, Mr Q remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Board had dealt with Mr Q's request for information in accordance with Part 1 of FOISA, by correctly notifying Mr Q that the information requested was not held. He did not require the Board to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 15 (Duty to provide advice and assistance) and 17(1) (Notice that information is 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 16 March 2009, Mr Q wrote to the Board requesting the following information:
 - a) A full note of a named Mental Health Officer's whereabouts between specified hours on a particular day
 - b) The name and contact details of the patient a particular doctor interviewed at a specified time on that day
 - c) The times at which the above meeting started and finished, as recorded by the doctor in question
 - d) The times and recordings of all telephone calls made by the named doctor and Mental Health Officer between specified hours on the day in question.



2. The Board responded on 17 March 2009. It did not supply any information to Mr Q but advised him that the concerns he raised related to a complaint that had previously been dealt with and referred him to a meeting of 30 October 2008.
3. On 30 March 2009, Mr Q wrote to the Board requesting a review of its decision. He was not satisfied that the meeting of 30 October 2008 adequately addressed his concerns.
4. The Board notified Mr Q of the outcome of its review on 20 April 2009, addressing each of his requests in turn. In response to parts (a) and (d) of his request, the Board advised Mr Q in terms of section 17(1) of FOISA that it did not hold the information he sought. With regard to points (b) and (c) of his request, Mr Q was advised that the information he sought was exempt in terms of section 38(1)(b) of FOISA.
5. On 22 April 2009, Mr Q wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Q had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 29 April 2009, the Board was notified in writing that an application had been received from Mr Q and was asked to provide the Commissioner with any information withheld from Mr Q. The Board responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Board, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Board was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. In its response, the Board stated that it did not in fact hold any of the information requested.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Mr Q and the Board and is satisfied that no matter of relevance has been overlooked.



11. In order to determine whether the Board was correct to respond to Mr Q's request by stating that it did not hold the information he had requested, the Commissioner must satisfy himself as to whether the Board held the information requested at the time it received the request.

Part (a) – a full note of a Mental Health officer's whereabouts between specified hours on a particular day

12. The Board submitted that the individual in question was employed by West Dunbartonshire Council rather than the Board, and therefore there was no expectation that it would hold this information on the individual's whereabouts.
13. The Board also explained that the only recorded evidence of the Mental Health Officer's whereabouts on this date was recorded in a letter, forming part of a health record of a particular individual, which had previously been supplied to Mr Q.

Part (b) – The name and contact details of the patient a particular doctor interviewed at a particular time on that day

14. The Board supplied a copy of the particular doctor's diary entry for that date. The entry showed patients booked in for various appointments throughout the day but no appointment for the time specified in Mr Q's request. As the identity of the patient was not recorded in the diary entry, the Board submitted that it could not be established and therefore that the information was not held.

Part (c) – the times at which the meeting referred to in part (b) started and finished, as recorded by the doctor in question

15. In response to this request, the Board supplied the Commissioner with the diary entry of an individual who was present at the meeting in question. Although this diary entry notes appointments between the times of 13:00 and 16:00, there is no evidence of an appointment at 17:00. The Board explains that a consultation can last from between 20 minutes to approximately one hour but that there is no means of establishing the exact start and finish times of the meeting in question.

Part (d) – the times and recordings of all phone calls made by the named doctor and Mental Health Officer between specified hours on the day in question

16. The Board explained that the doctor in question, on that particular date, was operating out of a particular health centre, in which there were several clinic rooms used for a variety of clinics by different staff: any one clinic room would not have been used solely by one person. The Board explained that it did not hold a record of which clinic room was used by this particular doctor on that day and was therefore unable to search for information on telephone calls made. The Board therefore explained that it was unable to assist Mr Q with this part of his request.



17. The Board explained that the particular Mental Health Officer, although employed by West Dunbartonshire Council, operated out of one of the Board's premises and had access to its telephone system. A copy of the call-log for the extension allocated to the Mental Health Officer at the time was obtained by the Board and supplied to the Commissioner. The log was also supplied to Mr Q in the course of the investigation. However, the Board indicated that this was simply a log of calls made from the extension number allocated to the Mental Health Officer at the time. As calls were not recorded, it could not confirm that the calls logged were in fact made by the Mental Health Officer in question.
18. The Commissioner has fully considered the explanations presented by the Board in respect of parts (a), (b), (c) and (d) of Mr Q's requests. Taking account of all the submissions, the nature of the requests and the circumstances surrounding the requests, the Commissioner is satisfied that, on balance of probabilities, the Board did not hold the information Mr Q had requested.
19. The investigating officer also asked the Board whether it had explored other options to address Mr Q's, given its sensitive nature. The Board provided a full explanation of the circumstances surrounding Mr Q's request and the Commissioner is satisfied in the circumstances that the Board has fulfilled its duty to provide Mr Q with advice and assistance in terms of section 15 of FOISA: the Commissioner would emphasise, however, that his satisfaction in this regard extends purely to the application of FOISA (and in particular the making of requests under section 1(1)) and not to any wider concerns Mr Q may have in relation to service delivery.

DECISION

The Commissioner finds that Greater Glasgow NHS Board acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Q.

Decision 116/2009
Mr Q
and Greater Glasgow NHS Board



Appeal

Should either Mr Q or Greater Glasgow NHS Board wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
9 October 2009



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.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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.

...