

# Decision Notice



Decision 122/2008 Ms Denise Turnbull and Lanarkshire NHS Board

Hospital policy information

Reference No: 200800541

Decision Date: 25 September 2008

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Ms Turnbull requested information from Lanarkshire NHS Board (the Board) relating to its policy and practice regarding the grades of staff managing a number of hospitals. The Board responded by providing an overview of its practice in respect of these hospitals, while confirming that it had no written policy on the grades of staff managing hospitals and citing section 17(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) with respect to this part of Ms Turnbull's request. Following a review, Ms Turnbull remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Board had dealt with Ms Turnbull's request for information in accordance with Part 1 of FOISA, by stating that it did not hold the information requested. The Commissioner did not require the Board to take any action.

## Relevant statutory provisions and other sources

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

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1. On 5 January 2008, Ms Turnbull wrote to the Board requesting the following information:  
*Lanarkshire Health Board's policy and practice regarding the grades of staff managing hospitals i.e. Kirklands, Birkwood, Strathclyde, Roadmeetings, Udston, Hartwood, Airbles Road, Douglas, Kello and Alexandria from 2000-2007.*
2. The Board responded on 4 February 2008 in two letters. In both responses, the Board stated that it had no written policy on the grades of staff managing hospitals and therefore gave notice to Ms Turnbull in terms of section 17(1) of FOISA. The Board did, however, provide an overview of what happened in practice with respect to the management of its hospitals in this context.



3. On 11 February 2008, Ms Turnbull wrote to the Board commenting on the details provided in its responses and pointing out that neither response gave her the information she had requested.
4. On 29 February 2008, the Board notified Ms Turnbull that it had treated her letter of 11 February 2008 as a request for review of its decision. In doing this, it stated that it was upholding its original decision that the information provided to her outlined the normal practice regarding the management of hospitals within NHS Lanarkshire. The Board did not, however, specifically confirm that it was upholding its original decision that it held no written policy on the matter.
5. On 8 April 2008, Ms Turnbull wrote to the Commissioner, stating that she 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. From her application, it was clear that she did not accept that no relevant policy was held and was not satisfied that the response in relation to practice answered that part of her request.
6. The application was validated by establishing that Ms Turnbull 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. The case was then allocated to an investigating officer.

## Investigation

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7. On 9 June 2008, the investigating officer 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 describe the searches it had conducted to establish whether it held the information requested, and also to explain why (if that were the case) no relevant information was recorded on a matter which appeared to affect the operational management of hospitals.
8. The Board subsequently responded and its submissions will be considered in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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9. In coming to a decision in this matter, the Commissioner has considered all the submissions presented to him by both Ms Turnbull and the Board and he is satisfied that no matter of relevance has been overlooked.



### Section 17 of FOISA (Notice that information is not held)

10. Before considering the details of this case, the Commissioner should make clear that his remit in carrying out this investigation has been to determine whether the Board held recorded information pertaining to Ms Turnbull's information request and not to comment on an authority's specific policy or practice in a particular context. It is not the Commissioner's function to consider whether a policy should or should not be established, and more generally it is not within his remit to require an authority to create information which it does not hold. He is not in a position to comment on the accuracy of any information an authority does hold, or its relevance to actual practice. Where comment is provided by an authority based on its understanding of practice rather than any recorded information, the Commissioner cannot assess the veracity of that comment.
11. Section 17(1) of FOISA requires that where an authority receives a request for information that it does not hold, it must give an applicant notice in writing to that effect.
12. In its responses of 4 February 2008, the Board advised Ms Turnbull that it did not have a written policy on this matter. It did, however, provide Ms Turnbull with an overview of what happened in practice with respect to how hospitals under its control were managed.
13. In order to determine whether the Board was correct to advise Ms Turnbull that it did not hold the information requested, the Commissioner must establish whether the Board holds (or rather held at the time of Ms Turnbull's request) information which would address her request. Essentially, he must be satisfied that the Board took all reasonable steps in the circumstances to establish what information it held.
14. With this in mind, the investigating officer asked the Board for a detailed overview of the searches it conducted to establish whether it held the information requested.
15. In its submissions, the Board confirmed that it had carried out a "*thorough and far ranging search for any copies of the documents requested*". The Board went on to describe the searches it had carried out and in doing this provided a comprehensive overview of the steps it had taken to establish if recorded information pertinent to Ms Turnbull's request existed.
16. The Board confirmed that the searches involved it approaching a number of individuals within the organisation who might have had access to a policy document. The Board's intranet (on which its HR policies were published) had been checked, along with local manual procedure files. These searches had not uncovered any relevant documents.
17. The Board also advised that its Assistant Director of Nursing had been contacted during the search process. The Assistant Director was unable to locate any relevant document for the Board itself. The Assistant Director additionally checked with colleagues in other Health Boards, all of whom confirmed that they did not have written policies of the type requested by Ms Turnbull. Finally, the Assistant Director approached the Royal College of Nursing (RCN) with a view to sourcing any relevant documents, but none were available from this source either.



18. In its initial submission to the Commissioner, the Board seemed to narrow the scope of the request to the management arrangements for hospitals in cases of absence of the designated manager without prior notice. The investigating officer sought clarification from the Board on this point and the Board subsequently confirmed that it had no recorded policy concerning the grades of staff managing hospitals in any circumstances. Practice in this context had simply built up over time without being set down in any recorded form.
19. Having considered the Board's submissions detailing the searches it undertook and its explanation of how practice had built up over time in this context, the Commissioner is satisfied that the information requested is not held by the Board, and that it was not so held at the time of Ms Turnbull's request. The Commissioner has concluded that the Board took all reasonable steps to identify what relevant information it held and was correct in informing Ms Turnbull that it did not hold the information requested.

## DECISION

The Commissioner finds that Lanarkshire NHS Board acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Turnbull, by correctly advising her in terms of section 17(1) of FOISA that it did not hold the information which had been requested.

## Appeal

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Should either Ms Turnbull or Lanarkshire 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 Investigations**  
**25 September 2008**



## Appendix

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### 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.

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##### 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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