

Decision Notice

Decision 149/2017: Fraser Morton and Ayrshire and Arran NHS Board

CTG training for midwives

Reference No: 201700741

Decision Date: 8 September 2017



Scottish Information
Commissioner

Summary

NHS Ayrshire and Arran was asked for information relating to CTG training offered to midwives. It stated that it did not hold the information. After investigation, the Commissioner accepted this.

Relevant statutory provisions

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

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.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. Cardiotocographs (CTGs) monitor the fetal heart rate with an ultrasound transducer and maternal contractions with a toco (strain gauge) transducer. During labour, they give an indication of how the fetal heart rate (FHR) is responding to the stress caused by maternal contractions.
2. On 8 January 2017, Mr Morton made a request for information to Ayrshire and Arran NHS Board (NHS Ayrshire and Arran). Mr Morton referred to training highlighted in section 8.0 of the document “*Fetal heart monitoring assessment and interpretation guideline*” produced by Attica Mustaqim (the Mustaqim guidance):

*“The midwifery standard is as follows: K2 study package to be completed with 5 scenarios **plus** 5 multidisciplinary CTG review sessions to be attended and reflective documentation to be completed on learning outcomes.”*

3. The information Mr Morton requested was:
 - (i) For the element of training outlined above [i.e. the CGT training], what individual, committee or board took the decision to withdraw this element of training and whose responsibility was this and whose signature is appended to the decision to withdraw this training?
 - (a) If the decision was taken by a committee or board please identify the purpose of the board or committee and the composition of its individual members by job title/role and name.
 - (b) Please provide all and any information that was available to any individual, committee or board in both the support and opposition to the decision to withdraw this element of training, this will include any hard copy or electronic material such as email, etc.

- (ii) For the element of training outlined above, if no formal decision was taken by any individual, committee or board to withdraw this element of training then please identify the date and provide evidence of when any of the executive management team responsible for maternity services became aware that this element of training was no longer being delivered as stated in the guideline produced by NHS Ayrshire and Arran.
- 4. NHS Ayrshire and Arran responded on 31 January 2017. It provided the following responses to each part of Mr Morton's information request:
 - (i) It stated that no individual, committee or board took the decision [to withdraw the CGT element of training].
 - (a) It stated that a response to this part of the request was "not applicable".
 - (b) It stated that a response to this part of the request was "not applicable".
 - (ii) NHS Ayrshire and Arran explained that since the Mustaqim guidance was produced, the Associate Nurse Director for Women's & Children's Services (the AND) had mandated an online training package for midwives to undertake CTG interpretation. Midwives were required to complete it on an annual cycle.
- 5. On 6 February 2017, Mr Morton wrote to NHS Ayrshire and Arran requesting a review of its decision. He was dissatisfied with the response to part (ii) of his information request as he considered it to be inaccurate and evasive. Mr Morton also referred to previous correspondence from NHS Ayrshire and Arran regarding the reintroduction of the CTG training (as mentioned in an action plan). He commented:

"If I were to take your current response as it stands it would appear as if a critical element of training has been allowed to lapse without the knowledge of anyone in charge. Would I be correct in this assertion?"
- 6. NHS Ayrshire and Arran notified Mr Morton of the outcome of its review on 2 March 2017. It stressed that no formal decision had been taken to withdraw the multidisciplinary CTG sessions: they had continued to take place, usually at a minimum of one a month. It explained that, in the past, midwives who are required to interpret CTG were asked to complete either the online K2 Study package on an annual basis, or to attend five multidisciplinary CTG review sessions annually. In 2011, the decision was taken to make the online K2 element of training mandatory. NHS Ayrshire and Arran stated that the multidisciplinary CTG sessions have never been mandatory for midwives. It explained that when the CTG multidisciplinary training was described as being "reintroduced" it did not mean that the training had been withdrawn but that it would now be made mandatory for relevant midwives to attend.
- 7. NHS Ayrshire and Arran stated that the training currently took place on Friday afternoons, which made it difficult for many staff to attend. It commented that while the AND became aware, through "informal channels", that some midwives were not able to attend CTG sessions due to inflexibility with their working practices or lack of time, there is no recorded evidence of when she became aware of this fact. However, as the online K2 training was made mandatory in 2011, "well before the issues of Midwives attending face to face sessions", the AND had assurance that Midwives who were interpreting CTG were receiving a nationally recognised quality controlled training package on an annual basis.
- 8. NHS Ayrshire and Arran gave Mr Morton notice, under section 17(1) of FOISA that it did not hold the information he had requested.

9. On 21 April 2017, Mr Morton applied for a decision from the Commissioner. He was dissatisfied with the outcome of NHS Ayrshire and Arran's review, finding it worrying that NHS Ayrshire and Arran had stated that no formal decision was taken to withdraw the CTG training and that it was still being provided, while also stating that midwives had been struggling to find the time to attend the training. He questioned the lack of recorded evidence which would show when NHS Ayrshire and Arran became aware of these issues surrounding the multidisciplinary CTG element of training.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that Mr Morton 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.
11. On 11 May 2017, NHS Ayrshire and Arran was notified in writing that Mr Morton had made a valid application and the case was allocated to an investigating officer.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Ayrshire and Arran was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Morton and NHS Ayrshire and Arran. She is satisfied that no matter of relevance has been overlooked.

Section 17(1) – Notice that information is not held

14. 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. 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.
15. In its review outcome, NHS Ayrshire and Arran confirmed that it held no information falling within part (ii) of Mr Morton's request, and that (in relation to part (i)), it had never taken a formal decision to withdraw the CTG training sessions. It maintained this position in its submissions to the Commissioner.
16. During the investigation, the Commissioner asked NHS Ayrshire and Arran for evidence to support its argument that the CTG sessions were not withdrawn and were continuing to be offered to staff. In response, NHS Ayrshire and Arran provided the Commissioner with a copy of its education programme from September 2014 to January 2017, which contained a month by month summary of the training offered to staff in the AMU Seminar Room, with details of dates and times listed for each course, along with the course provider.
17. The Commissioner notes that, from September 2014 to November 2015, the CTG sessions were offered almost weekly, usually between three and five times a month, but the frequency of the CTG sessions was significantly reduced after November 2015. In fact, between

December 2015 and January 2017, there was only one CTG session scheduled and that was in August 2016.

18. Given the virtual cessation of the CTG sessions from November 2015, it is difficult to understand why NHS Ayrshire and Arran has repeatedly reiterated that the CTG sessions had continued to take place, usually at a minimum of one meeting a month. It is clear from the evidence provided to her that this was simply not the case. The Commissioner acknowledges that she has not been provided with any evidence to suggest that delivery of the CTG sessions was formally withdrawn (by a Board or Committee) but it is clear that NHS Ayrshire and Arran effectively stopped offering the sessions in December 2015.
19. NHS Ayrshire and Arran was asked how it established that it did not hold any information covered by part (ii) of Mr Morton's request. It submitted that it had searched the email accounts and individual computer drives of the AND and the author of the Mustaqim guidance, as well as the departmental shared drive which is available to anyone within maternity services. No relevant information had been found. NHS Ayrshire and Arran provided a list of the search terms used to interrogate the drive and email accounts.
20. NHS Ayrshire and Arran submitted that there had been a number of staff changes over the years with many staff either leaving the health board or moving post within the organisation. It argued that it would be a significant task to identify all staff in post who may have alerted the AND to the difficulties midwives were finding in attending the CTG sessions. It stated that the AND has daily contact with midwives and suggested that awareness of the situation may even have come from a passing comment from a midwife and not necessarily from a manager. NHS Ayrshire and Arran noted that it employs over 200 midwives.
21. NHS Ayrshire and Arran were asked about the "informal channels" it had referred to in its review outcome (this relates to awareness of the difficulties some midwives were having in finding time to attend the CTG sessions). NHS Ayrshire and Arran was also asked if it held information identifying the year in which the AND became aware of the problem of midwives not being able to attend the CTG sessions.
22. In response, NHS Ayrshire and Arran submitted that "informal communications" was a more appropriate description of the means by which the AND became aware of the issues, rather than its previous reference to "informal channels". It had been trying to explain that the AND was made aware of difficulties in staff attending the CTG sessions as part of day to day operational business, in the same way that discussions will occur between staff and managers about all operational aspects of the service. It submitted that this communication would have occurred as part of a general conversation with no need to formally record the evidence of the conversation.
23. NHS Ayrshire and Arran explained that the Mustaqim guidance is a clinical guideline, which is essentially a statement that has been systematically developed to assist clinicians in making decisions about the treatment and care of patients. It noted that clinical guidelines are designed to facilitate good practice and are not compulsory unless specifically stated. NHS Ayrshire and Arran explained that the guidelines set out an aspirational standard for those midwives with responsibility for interpreting CTG as part of their role, the aspirational standard being the completion of the K2 study package (with five scenarios completed) plus five multidisciplinary CTG review sessions.
24. NHS Ayrshire and Arran acknowledged that what is not clear in the guidelines is that the only part of the training that was mandatory was the K2 online study package for all staff with responsibility for interpreting CTGs as part of their role. It stated that staff were aware that

undertaking the K2 training package was mandatory for their role, and participation is monitored for compliance. To evidence this, NHS Ayrshire and Arran provided the Commissioner with an email from March 2012 seeking confirmation that all relevant midwives had completed the K2 online course.

25. NHS Ayrshire and Arran explained that attendance at the multidisciplinary CTG sessions was an aspirational standard but was not compulsory and that no register of attendance was taken. It provided excerpts from its Policy Document Control Process paper which included definitions of the terms “policy” and “guideline” and it reiterated that the Mustaqim guidance was a local clinical guidance document for staff to assist practitioners in making evidence based decisions to care for patients. It explained that such guidelines inform clinical practice but do not dictate it. It submitted that staff were aware that the K2 training was compulsory and attendance at the CTG sessions was recommended as best practice.
26. NHS Ayrshire and Arran explained that while a register of attendance was not taken at CTG sessions, staff who attended would have recorded this in their own electronic Personal Development Plan (PDP), and the PDPs would have been discussed during their Personal Development Review (PDR) with their line manager. In addition, NHS Ayrshire and Arran noted that line managers may recommend and encourage attendance at such events.
27. NHS Ayrshire and Arran was asked whether, during their PDR, individual midwives might have raised concerns about their inability to attend the timetabled CTG sessions and, if so, whether these concerns would have been recorded or flagged up to senior staff.
28. NHS Ayrshire and Arran acknowledged that staff may have raised such concerns during their PDR meeting, but it submitted that this process is confidential and staff are told it is governed by the Data Protection Act 1998. It did not consider it appropriate to search the PDR records of individual staff. In addition, NHS Ayrshire and Arran submitted that if any concerns about training were raised and a manager felt that the concerns merited being escalated to senior management, this would be recorded in a communication, probably an email to the AND who has ultimate responsibility for training.
29. NHS Ayrshire and Arran reiterated that the personal emails and drives of the AND and the author of the Mustaqim guidance, as well as the departmental shared drives had been searched with no trace of any such communication. In addition, NHS Ayrshire and Arran searched the emails of the AND’s line manager, for any evidence that the AND had passed on concerns about midwives being unable to attend CTG sessions, and no relevant information was found.
30. The Commissioner did not require NHS Ayrshire and Arran to interrogate the PDR records of individual midwives. She acknowledges that if training issues were raised during a PDR, which needed to be flagged up to senior staff, it is likely that this would be done by email and that a written record would have been created. The Commissioner notes that the focus of Mr Morton’s request for information is the notification of the executive management team about the CTG training issues, rather than specific comments from individual midwives. The Commissioner is satisfied that NHS Ayrshire and Arran have conducted reasonable searches and have not found any record of such notification.
31. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that NHS Ayrshire and Arran interpreted Mr Morton’s request reasonably and took adequate steps to establish whether it held any information covered by his request.

32. The Commissioner cannot consider whether or not NHS Ayrshire and Arran *should* have held information falling within the scope of Mr Morton's request for information, nor can she assess or comment on its policies or practices as they relate to the delivery of healthcare.
33. The Commissioner can only consider whether NHS Ayrshire and Arran held any relevant information falling within the scope of part (ii) of Mr Morton's request for information, at the time he made his request. On this point the Commissioner is satisfied, on the balance of probabilities, that NHS Ayrshire and Arran does not hold any relevant recorded information.
34. The Commissioner is therefore satisfied that NHS Ayrshire and Arran was correct to give Mr Morton notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

Decision

The Commissioner finds that Ayrshire and Arran NHS Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Morton.

Appeal

Should either Mr Morton or Ayrshire and Arran 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
Acting Scottish Information Commissioner

8 September 2017

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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