

# Decision Notice



Decision 152/2012 Dr D H S Reid and the Scottish Ministers

Patient access to a consultant or registrar

Reference No: 201201318

Decision Date: 4 September 2012

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Dr Reid asked the Scottish Ministers (the Ministers) for information about the timescale and process for being referred to a consultant or registrar. Dr Reid did not accept that the information provided was what he had asked for. Following an investigation, the Commissioner identified one additional item which fell within the scope of Dr Reid's request, but found that in general the Ministers had complied with Part 1 of FOISA in dealing with the request.

## Relevant statutory provisions and other sources

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

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

## Background

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1. On 18 January 2012, Dr Reid wrote to the Ministers with the following request:

“For information held about the time and process for being referred to a consultant/registrar, please provide:

  - a. Any information (for example a policy or guidance) in which the process of referring an individual to a consultant is described and the key steps for an individual to be treated by a consultant;
  - b. Any recorded information as to the definition as to what is meant by the term “treated” by a consultant or registrar; and
  - c. Any documented information regarding consultant waiting times, e.g. how long is the target for such waiting times and what is the average?”
2. On 29 February 2012, the Ministers responded to Dr Reid's request. They provided details of a number of documents on the Scottish Government website with information about performance targets and measures covering health improvement, efficiency, access and treatment (“HEAT” targets).



3. On 14 March 2012, Dr Reid asked for a review of the Ministers' response, advising that he still required the information he had requested on 18 January 2012.
4. On 17 April 2012, the Ministers sent Dr Reid the outcome of their review, which concluded that the original reply should be upheld and that his request had been correctly handled in accordance with their procedures and the relevant legislative requirements. The Ministers also explained their strategic policy objective of moving away from delivering NHS services through doctors in training towards a service predominantly delivered by trained doctors as part of a "mixed economy" of medical and non-medical members of the clinical team.
5. On 5 July 2012, Dr Reid wrote to the Commissioner, expressing his dissatisfaction with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Dr Reid did not consider that the Ministers had provided all the information covered by his request.
6. The application was validated by establishing that Dr Reid 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 12 July 2012, the Ministers were notified in writing that an application had been received from Dr Reid and were given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA).
8. The Ministers were asked whether they held any information which would address Dr Reid's information requests in a more direct way than had been achieved through the information already provided. They were asked whether the searches carried out in relation to Dr Reid's request would have retrieved such information and, if so, to explain why.
9. The investigating officer expressed concern at the length of the webpage addresses (URLs) which the Ministers had expected Dr Reid to copy from their response, and asked the Ministers to note that both Dr Reid and the investigating officer had experienced difficulties in accessing some of the information.
10. The Ministers responded on 1 August 2012, in the terms summarised below.
11. A summary of the Ministers' response was prepared for Dr Reid and discussed with him.
12. Submissions from all parties involved in this case (where relevant) are summarised and considered in the Commissioner's analysis and findings section below.



## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Dr Reid and the Ministers and is satisfied that no matter of relevance has been overlooked.

### Information held and not held

14. The Ministers advised the Commissioner that a search for information relating to Dr Reid's request had been carried out in the Scottish Government's Health Directorate, specifically seeking any information about the time and process for being referred to a consultant or registrar. All those consulted indicated that they held no relevant information and were not aware of any relevant policies or documentation. The Primary Care Services team indicated that guidance on GP referral would be a matter for the General Medical Council or the British Medical Association rather than the Scottish Government, suggesting this was a clinical issue rather than a policy issue.
15. The Ministers advised that information had been identified on the ISD (Information Service Division) website which included the most recent quarterly report on cancer waiting times, and the data and definitions manual for the cancer waiting times target.
16. In relation to Scottish Government policy, the Ministers explained that it was for NHS Boards to determine how best to deliver services to meet the needs of their local population, and organising appointments or scheduling admissions to hospital was an operational matter for those Boards. However, to ensure delivery of waiting time targets, NHS Boards' local arrangements would normally be for a patient to be referred to a Consultant-led team, not to an individual Consultant unless this was required for continuity of care or patient safety reasons. They referred to the Patient Rights (Scotland) Act 2011, which sets out that patients must receive their inpatient and day case treatment within 12 weeks of treatment being agreed.
17. The Commissioner understands from this submission that the assumption behind the first part of Dr Reid's request (that it is Scottish Government policy to guarantee patients access to a consultant or registrar) is mistaken, as any such policy would be a matter for the relevant NHS Board.
18. The Commissioner takes the view that it would have been more helpful for the Ministers' response to have addressed the specific information requests in Dr Reid's letter, rather than providing voluminous and (in some cases) complex information on broadly related matters; and to have explained at the outset that the Scottish Government did not have a policy which would guarantee patients access to a consultant or registrar and was therefore unlikely to hold information about this.



19. The Ministers acknowledged that although their original response had tried to be helpful to Dr Reid and had provided as much information as it was possible to glean from those who were consulted, it could perhaps have been drafted in a clearer fashion. They also accepted that typing in long web addresses was not a straightforward task and that it would have been more helpful to send Dr Reid printed versions of the information in the first place (as they had done subsequently).
20. The Ministers provided a copy of a document entitled “18 Weeks: the Referral to Treatment Standard - Principles and Definitions” which they now considered should have been retrieved and provided to Dr Reid. Although their original reply to Dr Reid of 29 February 2012 made general reference to the website [www.18weeks.scot.nhs.uk](http://www.18weeks.scot.nhs.uk), the letter had not provided any direct reference or link to this document. The document contained information covered by Dr Reid’s request under the headings ***What is a Referral?*** and on the following page ***What is a Consultant-Led Team?***
21. Under section 1(1) of FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. In failing to provide this document when responding to Dr Reid’s request, the Ministers failed to comply fully with section 1(1).
22. Given that Dr Reid has now received a full explanation confirming that no further information is held, and explaining why this is the case (and given that, in the circumstances, the Commissioner is satisfied with this explanation), the Commissioner does not require the Ministers to take any further action in relation to their failure to comply fully with section 1(1) of FOISA in this particular case.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) generally complied with Part 1 of FOISA in responding to the information request from Dr Reid, but (in failing to provide the information from one particular document) failed to comply fully in relation to the requirements of section 1(1).

The Commissioner does not require the Ministers to take any action in this particular case.



## Appeal

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Should either Dr Reid or the Scottish Ministers 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**  
**4 September 2012**



## 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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