

Decision Notice

Decision 190/2017: Mrs Carolyn Neilson and Greater Glasgow and Clyde Health Board

GP Out of Hours Service

Reference No: 201700043

Decision Date: 20 November 2017



Scottish Information
Commissioner

Summary

NHS Greater Glasgow and Clyde was asked for information about its GP Out of Hours Service.

NHS Greater Glasgow and Clyde disclosed some information, but stated that it did not hold some of the information that had been asked for; that some of the information was personal data and exempt from disclosure; and that it would exceed the £600 cost limit to provide other the information.

The Commissioner found that NHS Greater Glasgow and Clyde failed to comply with the timescales in FOISA for responding to the request and requirement for review and, initially, failed to identify all the relevant information it held. However, he also found that NHS Greater Glasgow and Clyde correctly withheld some personal data and it was not obliged to respond to part of the request because it would cost more than £600 to do so.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 10(1) (Time for compliance); 12(1) (Excessive cost of compliance); 21(1) (Review by a Scottish public authority); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definition of the data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data"); Schedule 1 (The data protection principles, Part 1 - the principles) (the first data protection principle); Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendices form part of this decision.

Background

1. On 5 April 2016, Mrs Neilson made requests for information to the Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) (reproduced in full at Appendix 2). The information requested was about NHS Greater Glasgow and Clyde's GP Out of Hours Service.
2. NHS Greater Glasgow and Clyde provided a partial response to Mrs Neilson on 4 May 2016, providing information in response to some of the requests but responding to the majority by stating "a response to this part of your request is still to be provided".
3. On 17 May 2016, Mrs Neilson wrote to NHS Greater Glasgow and Clyde requesting a review of its decision on the basis that she had issues with the responses provided to requests 1, 6, 7(a), 10 and 11, and was unhappy that the majority of her requests had not been answered.

4. NHS Greater Glasgow and Clyde notified Mrs Neilson of the outcome of its review on 30 June 2016. NHS Greater Glasgow and Clyde provided information in respect of some requests, stated that it did not hold any information for others and claimed other information was exempt under section 38(1)(b) of FOISA.
5. On 6 July 2016, NHS Greater Glasgow and Clyde wrote again to Mrs Neilson, apologising for its delay in responding to her and for its initial response being incomplete.
6. On 6 January 2017, Mrs Neilson wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs Neilson was dissatisfied with the outcome of NHS Greater Glasgow and Clyde's review because:
 - (i) She believed additional information was held for a number of her requests;
 - (ii) She did not agree with NHS Greater Glasgow and Clyde's application of section 38(1)(b) of FOISA (submitting that it should be possible to disclose further information without breaching the data protection principles) and
 - (iii) She was unhappy with NHS Greater Glasgow and Clyde's delay in responding to her requests.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mrs Neilson made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to her for a decision.
8. On 3 February 2017, NHS Greater Glasgow and Clyde was notified in writing that Mrs Neilson had made a valid application. It was asked to send the Commissioner the information withheld from Mrs Neilson under section 38(1)(b) of FOISA. NHS Greater Glasgow and Clyde provided the information and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Greater Glasgow and Clyde was invited to comment on this application and answer specific questions, focusing on its application of section 38(1)(b) of FOISA and the searches it had carried out to identify and locate information falling within the scope of the requests.
10. During the investigation, NHS Greater Glasgow and Clyde disclosed further information to Mrs Neilson on a number of occasions.
11. Subsequently Mrs Neilson confirmed to the investigating officer her outstanding dissatisfaction for the following reasons:
 - (i) She believed NHS Greater Glasgow and Clyde should still hold some staff rotas that had not been disclosed to her;
 - (ii) She believed NHS Greater Glasgow and Clyde held monthly returns which might contradict information in the staff rotas;
 - (iii) She believed a job description should be held for the role of the Out Of Hours Associate Medical Director post which had not been provided;

- (iv) She was unhappy that NHS Greater Glasgow and Clyde had not provided her with timeous responses to her request and review requirement;
 - (v) She was unhappy that NHS Greater Glasgow and Clyde had not provided her with some of the information it held until during the Commissioner's investigation;
 - (vi) She did not agree with NHS Greater Glasgow and Clyde's application of section 38(1)(b) of FOISA to some of the information, submitting that only sensitive personal data should be withheld.
12. After further discussions with the investigating officer, NHS Greater Glasgow and Clyde stated that while it had initially considered the returns information (paragraph 11(ii)) fell outwith the scope of Mrs Neilson's requests, it now accepted that this information did fall within scope. However, NHS Greater Glasgow and Clyde claimed section 12(1) of FOISA applied, on the basis that it would cost in excess of £600 to provide this information.

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 him by both Mrs Neilson and NHS Greater Glasgow and Clyde. He is satisfied that no matter of relevance has been overlooked.

Section 1(1) of FOISA

14. As indicated above, NHS Greater Glasgow and Clyde disclosed additional information to Mrs Neilson during the investigation. It acknowledged that the searches it had carried out earlier to identify and locate information falling within the scope the requests had been incomplete.
15. As also indicated above (see paragraph 12), NHS Greater Glasgow and Clyde omitted relevant information from its consideration of Mrs Neilson's requests until during the investigation.
16. The Commissioner therefore finds that NHS Greater Glasgow and Clyde failed to comply with section 1(1) of FOISA in responding to Mrs Neilson's requests, as it failed to identify and locate all the information it held and which fell within the scope of these requests until after the investigation had begun. The adequacy of the searches carried out will be considered further below.

Section 17(1) of FOISA - Information not held

17. Although NHS Greater Glasgow and Clyde provided information to Mrs Neilson during the investigation, she was of the view that it held still further information it had not disclosed. Mrs Neilson believed NHS Greater Glasgow and Clyde should hold:
- (i) ICCP rotas from November 2012 to January 2013 and
 - (ii) a job description for the post of Associate Medical Director Out of Hours Service – to which, during the investigation, she ascribed the names of two doctors.
18. NHS Greater Glasgow and Clyde submitted that it did not hold this information and relied on section 17(1) of FOISA.
19. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.

20. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

General searches

21. NHS Greater Glasgow and Clyde submitted that following receipt of Mrs Neilson's requests on 5 April 2016 an email was sent to relevant staff on 7 April, asking that they review the requests and identify those questions they were able to provide information for. The requests covered information relating to several different areas of the organisation, which it went on to identify. It also identified the staff it asked to assist in sourcing the information, explaining their respective roles. It confirmed that some staff were re-contacted during the investigation to confirm whether or not additional information was held, and additional members of staff (whom it identified) were contacted in relation to the request.
22. NHS Greater Glasgow and Clyde detailed the information identified, located and provided to Mrs Neilson, both initially and during the investigation. It provided evidence of email contact with the officers involved in the searches.
23. NHS Greater Glasgow and Clyde also provided explanations of aspects of the processes involved

Searches for the staff rotas

24. NHS Greater Glasgow and Clyde provided details of the locations searched for the rotas and the searches carried out. These had identified no rotas from before Monday, 7 January 2013. It acknowledged that rotas for one period (07/01/2013 to 02/03/2013) were omitted from what was provided to Mrs Neilson: this was rectified during the investigation.
25. Responding to Mrs Neilson's assertion that the rotas were incomplete, NHS Greater Glasgow and Clyde commented that the rotas were complete to the extent that they contained all the relevant information it held. Not all the information might be as expected by Mrs Neilson, but it was only obliged to provide the information it held for any given request.

Searches for the job descriptions

26. For request 6, NHS Greater Glasgow and Clyde provided Mrs Neilson with a management structure chart and a number of job descriptions. While noting that Mrs Neilson believed she had not been provided with job descriptions for two specified individuals, it emphasised that job descriptions relate to roles (as specified in the request, in any event) and not to specific persons. It considered it had provided all the information it held with regard to the post of Associate Medical Director, in the context of request 6. It did not hold a job description specific to that post within the GP Out of Hours service, or job descriptions relating to the duties performed by the named individuals for that service. It provided further explanation of the post and the roles performed by the named individuals.
27. Having considered all the submissions received from NHS Greater Glasgow and Clyde on the steps taken to identify and locate the information still being sought by Mrs Neilson, with the supporting explanations, the Commissioner is satisfied – on the balance of probabilities –

that NHS Greater Glasgow holds no further information on the matters Mrs Neilson remains dissatisfied with. As indicated above, the question is not whether it should hold the information in question, but whether it actually does.

28. The Commissioner is satisfied, therefore, that NHS Greater Glasgow and Clyde had, by the end of the investigation, conducted adequate, proportionate searches for information falling within the scope of Mrs Neilson's requests.

Section 38(1(b) – Personal information

29. The information that NHS Greater Glasgow and Clyde wished to withhold under this exemption was contained in complaints considered by the Quality Assurance Group (QAG). This information was redacted from the QAG minutes provided to Mrs Neilson: NHS Greater Glasgow and Clyde reconsidered these redactions and disclosed some further information from these documents during the investigation. NHS Greater Glasgow and Clyde submitted that the remaining redactions were of a sensitive nature and could not be disclosed: Mrs Neilson disagreed with this.
30. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (2)(b) (as appropriate), exempts personal data if its disclosure to a member of the public, otherwise than under FOISA, would contravene any of the data protection principles.
31. In considering the application of this exemption, the Commissioner will first consider whether the information in question is personal data as defined in section 1(1) of the DPA. If it is, he will go on to consider whether disclosure of the information would breach the first data protection principle (as claimed by NHS Greater Glasgow and Clyde in this case). This particular exemption is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.

Is the information under consideration personal data?

32. "Personal data" are defined in section 1(1) of the DPA as "data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller" (the full definition is set out in Appendix 1).
33. The withheld information mentioned specific complaint cases dealing with how named doctors dealt with patients presenting at the Out of Hours Service, along with findings on the complaints.
34. The Commissioner is satisfied that the information relates to living individuals, i.e. specific doctors, patients and their families, and comprises significant biographical information. He is satisfied that the individuals concerned are either identified in the information, or there is a real risk of their being identified from it. It is their personal data.
35. NHS Greater Glasgow and Clyde acknowledged that the withheld information provided insight into the investigation and handling of complaints relating to the Out of Hours Service, but did not believe it would be possible to provide that insight without providing information from which the individuals concerned could be identified. The Commissioner agrees: information on the handling of complaints is sufficiently intertwined with personal data that he does not consider it would be practicable to redact the information to deprive it of its character as personal data.

Can any of the conditions in Schedule 2 be met?

36. The first data protection principle requires that data shall be processed fairly and, in particular, that they shall not be processed unless at least one of the conditions in Schedule 2 to the DPA can be met. If the personal data are sensitive personal data, at least one of the conditions in Schedule 3 must also be met: the Commissioner will consider the Schedule 2 conditions first. The processing in this case would be disclosure into the public domain, in response to Mrs Neilson's request.
37. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47¹, that the conditions required careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interest of the data subject (i.e. the person or persons to whom the data relate).
38. The first Schedule 2 condition which might be considered relevant in this case is condition 1. Condition 1 applies when the data subject has consented to the processing. NHS Greater Glasgow and Clyde submitted that no consent had been given by the individuals concerned: it had not considered it practicable to seek consent in the circumstances. The Commissioner accepts that condition 1 cannot be met in this case.
39. The Commissioner's view is that condition 6 is the only Schedule 2 condition which might permit disclosure to Mrs Neilson. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects.
40. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
 - (i) Does Mrs Neilson have a legitimate interest or interests in obtaining the personal data?
 - (ii) If so, is the disclosure necessary to achieve those legitimate interests? In other words, is the processing proportionate as a means and fairly balanced as to ends, or could these interests be achieved by means which interfere less with the privacy of the data subjects?
 - (iii) Even if the processing is necessary for Mrs Neilson's legitimate interests, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects?
41. There is no presumption in favour of disclosure of personal data under the general obligation laid down by section 1(1) of FOISA. Accordingly, the legitimate interests of Mrs Neilson must outweigh the rights and freedoms or legitimate interests of the data subjects before condition 6 will permit disclosure. If the two are evenly balanced, the Commissioner must find that the condition cannot be met.

¹ <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>

Does Mrs Neilson have a legitimate interest in obtaining the personal data?

42. There is no definition within the DPA of what constitutes a "legitimate interest", but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's published guidance² on section 38 states:
- "In some cases, the legitimate interest might be personal to the applicant - e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety."
43. Mrs Neilson submitted that she already knew that many Out of Hours Service GPs considered the complaints management and investigation process to be unfair and this had had a knock on effect on some GPs' willingness to work for the service. In that context, she wanted to see by whom these complaints were relayed to the QAG, how they were relayed, what information was relayed, what was discussed and by whom. She wished to understand the severity of the complaints. She stated that she also wished to know and understand the process by which the QAG managed complaints, and whether anyone particularly within the QAG influenced the progress of complaints management. She wished to know how the QAG managed complaints about members who themselves worked Out of Hours sessions. She highlighted the importance of transparency in relation a key public service which aspired to continual improvement.
44. While acknowledging that the withheld personal data would provide an insight into the investigation and handling of complaints, NHS Greater Glasgow and Clyde did not consider that Mrs Neilson had a legitimate interest in obtaining it.
45. However, the Commissioner is satisfied that Mrs Neilson, along with the wider public, has a legitimate in obtaining information which would facilitate understanding of NHS Greater Glasgow and Clyde's handling of complaints relating to a key area of patient care. NHS Greater Glasgow and Clyde has acknowledged that the withheld personal data would contribute to this.
46. In all the circumstances, the Commissioner accepts that Mrs Neilson is pursuing a legitimate interest in seeking the withheld personal data.

Is disclosure of the information necessary for the purposes of these legitimate interests?

47. The Commissioner must now consider whether disclosure of the personal data is necessary for Mrs Neilson's legitimate interests. In doing so, he must consider whether these interests might reasonably be met by any alternative means.
48. Mrs Neilson explained that she had been unable to identify any alternative means of acquiring information which would address the legitimate interests she had identified.
49. NHS Greater Glasgow and Clyde argued that the role and remit of the QAG were clearly set out in a document already provided to Mrs Neilson and could also be seen in the unredacted parts of the minutes which had been given to her. It also highlighted the possibility of seeking less detailed information, possibly after dialogue with the Out of Hours Service. In the circumstances, this does not appear to address the Mrs Neilson's legitimate interests fully. The Commissioner can identify no means of doing so which would interfere less with

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx>

the privacy of the data subjects than providing the redacted information from the QAG minutes. He is therefore satisfied that disclosure of the withheld personal data is necessary for the purposes of Mrs Neilson's legitimate interests.

Would disclosure be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects?

50. The Commissioner must now consider whether the processing is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects. This test involves a balancing exercise between the legitimate interests of Mrs Neilson and those of the individuals concerned. Only if the legitimate interests of Mrs Neilson outweigh those of the data subjects can the information be made available without breaching the sixth condition.
51. In the Commissioner's guidance, he notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:
 - (i) Whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
 - (ii) The potential harm or distress that may be caused by the disclosure
 - (iii) Whether the individual objected to the disclosure
 - (iv) The reasonable expectations of the individuals as to whether the information should be disclosed.
52. NHS Greater Glasgow and Clyde submitted that none of the individuals concerned would have an expectation that their personal data would be disclosed in this way. It highlighted the sensitive nature of the information, for both the patients and the doctors, submitting that the individuals concerned would have believed they were providing the information in confidence for the purposes of investigating the complaint.
53. The Commissioner accepts that a complaint investigation process of this nature creates an expectation of privacy. He accepts that it involves the provision of information in confidence, with a view to the issues in question being considered fully and those whose action is under consideration being treated fairly. He agrees that those involved would not reasonably expect that information, or the QAG's deliberation on it, to be made public.
54. Having considered the competing interests of Mrs Neilson and the data subjects, the Commissioner finds that Mrs Neilson's legitimate interests are outweighed by the prejudice to the rights and freedoms of the parties whose personal data would result from disclosure. On balance, therefore, he must find that the requirements of condition 6 cannot be met here.
55. Given this conclusion, the Commissioner finds that there is no condition in Schedule 2 which would permit disclosure of the withheld personal data. In the absence of a condition permitting disclosure, that disclosure would be unlawful. Consequently the Commissioner finds that disclosure would breach the first data protection principle and that the information is therefore exempt from disclosure (and properly withheld) under section 38(1)(b) of FOISA.

Section 12(1) - Excessive cost of compliance

56. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation

5 of the Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.

57. The projected costs the authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The authority may not take account of the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
58. NHS Greater Glasgow and Clyde submitted that section 12(1) applied to Mrs Neilson's request for copies of the monthly returns information, as information which might contradict the ICGP rotas (request 3). It acknowledged that it held information falling within the scope of this part of the request, even if not all of the monthly return might do so, but argued that the cost of locating, retrieving and providing that information, including necessary redaction, would exceed the £600 cost limit. NHS Greater Glasgow and Clyde submitted that as the returns had handwritten comments on them pertaining to the earnings of the various doctors, information would require to be redacted before the returns could be disclosed.
59. After some discussion on the methodology for applying section 12(1), including comments from Mrs Neilson, submissions were based on a sample of the returns for six months, selected at random.
60. The following tasks were undertaken in the sample exercise:
 - Monthly returns located and retrieved from file and archive store;
 - Documents packaged for transportation;
 - Travel to collect documents;
 - Documents disassembled;
 - Documents scanned;
 - Documents saved to file as pdf and relevant file name allocated;
 - Optical Character Recognition performed in order to use redaction tool in Adobe application;
 - Personal information redacted;
 - Redactions checked.
61. NHS Greater Glasgow and Clyde provided the Commissioner with its costings for carrying out the work required, with the total sum coming to just over the £600 limit. NHS Greater Glasgow and Clyde's submissions included costings for the grades of staff required to carry out the work and their hourly rates of pay, mileage costs for travelling to and from the location where the files were held, the costs of redacting the returns and a breakdown of the clerical tasks involved.
62. The Commissioner has considered these submissions carefully. He is satisfied that a reasonably representative was used. He is also aware that there were months with a higher

number of returns than those in the sample. It is possible that the actual cost of providing all the returns could be higher than this estimate.

63. Taking account of all the circumstances, the Commissioner is satisfied that NHS Greater Glasgow and Clyde has provided a reasonable estimate of the cost of complying with this part of request 3. It may be close to the £600 limit in itself, but naturally the cost of complying with the whole request, including the supply of the rotas, would be higher. The Commissioner accepts that the request could not have been responded to within the £600 limit.
64. Consequently, the Commissioner is satisfied that NHS Greater Glasgow and Clyde was entitled to rely on section 12(1) of FOISA in relation to request 3, and therefore was under no obligation to comply with the request. The rotas were supplied in any event and Mrs Neilson cannot expect more.

Timescales

65. Mrs Neilson expressed dissatisfaction that NHS Greater Glasgow and Clyde failed to comply with the timescales required by FOISA in responding to her request and requirement for review.
66. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
67. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to qualifications which are not relevant in this case.
68. The Commissioner notes that NHS Greater Glasgow and Clyde apologised to Mrs Neilson for its failures in responding timeously.
69. As NHS Greater Glasgow and Clyde has acknowledged, it failed to respond to Mrs Neilson's requests and requirement for review within the required timescales, so the Commissioner must find that in these respects it failed to comply with sections 10(1) and 21(1) of FOISA.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mrs Neilson. In particular, he finds that NHS Greater Glasgow and Clyde failed:

- (i) to identify, locate and provide all information that fell within the scope of Mrs Neilson's request until his investigation was underway;
- (ii) to respond to the request and requirement for requirement within the timescales laid down by sections 10(1) and 21(1) of FOISA;

However, the Commissioner finds that, by the close of the investigation, adequate searches had been carried out and NHS Greater Glasgow and Clyde had identified and located all relevant information it held. He also finds that NHS Greater Glasgow and Clyde was correct in withholding information which was personal data under 38(1)(b) of FOISA, and to refuse one request under the excessive cost provisions in section 12(1) of FOISA.

Given the provision of information to Mrs Neilson during this investigation, the Commissioner does not require NHS Greater Glasgow and Clyde to take any action in relation to the above breaches.

Appeal

Should either Mrs Neilson or Greater Glasgow and Clyde Health 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

20 November 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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

...

(2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

(e) in subsection (1) of section 38 –

...

(ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

10 Time for compliance

(1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

(b) in a case where section 1(3) applies, the receipt by it of the further information.

...

12 Excessive cost of compliance

(1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

38 Personal information

- (1) Information is exempt information if it constitutes-

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

- (2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles; or

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

- (5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 - The data protection principles

Part I - The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

Schedule 2 - Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

Appendix 2: information request

Please can you provide me with the following information:

1. A list of the dates of all ICGP [Integrated Care General Practitioner] meetings held between December 2010 and the date of your response.
2. The minutes of these meetings.
3. The ICGP rotas from November 2012 to the date of your response and additional information held that contradicts information contained in the rotas (for example monthly returns with names redacted).
4. Information confirming that the NHS GG & C have been assessing whether all ICGPs, including the lead clinician, have been safely integrating their out of hours work into their overall working pattern.
5. The NHS GG & C whistleblowing policy.
6. The OOH [Out of Hours] GP service management structure from May 2010 to date and all related job descriptions(present and past) including the role of Associate Medical Director.
7. (a) The policy, procedure or process followed by the Board in relation to the management of OOH GPs when the OOH Service receives a complaint from a patient about an OOH GP; (b) The policy, procedure or process followed by the Board in relation to the management of OOH GPs when the OOH Service receives a complaint about an OOH GP from a colleague or other Health Care Professional; (c) Information showing that OOH GPs are informed under which policy, procedure or process the complaint is being investigated (d) Information showing what support is offered to these GPs; (e) Information showing how the final outcome of the complaint is communicated to them; (f) Information confirming where records are held of the nature of the allegation, the stage reached and the outcome.
8. Information confirming what measures have been put in place to ensure that the principles of fairness, consistency, reasonableness, equitability and justice are applied to these processes (policies or procedures).
9. The OOH GP service governance process(es).
10. Any guidance used by management for managing issues regarding conduct and competence of OOH GPs.
11. Information explaining the role of the Quality Assurance Group (QAG) and the identity of its members.
12. Information confirming how often the QAG meet.
13. A list of dates of all QAG meetings held in 2012, 2013, 2014, 2015 and 2016 until the date of your response. The minutes of these meetings and the reports submitted by the OOH service for discussion at these meetings.
14. The number of complaints raised against OOH management from 2010 to date in relation to (a) bullying, (b) breach of contract, (c) victimisation, (d) unreasonable refusal of requests for annual leave.

15. The number of grievances raised against OOH management from 2010 to date in relation to (a) bullying, (b) breach of contract, (c) victimisation, (d) unreasonable refusal of requests for annual leave.
16. Information confirming who has responsibility for investigating complaints against OOH management.
17. (a) The number of OOH GPs with contracts of employment with associated terms and conditions of service; (b) The number of OOH GPs within that group who receive rolled-up holiday pay (i.e.who receive extra pay for holiday pay on top of their hourly rate instead of being paid holiday pay at the time when they take their annual leave); (c) The number within that group who do not receive occupational sick pay.
18. Information confirming reasons put forward to the Board why salaried OOH GPs with contracts of employment have been shedding contracted shifts rather than applying to take on more.
19. The reasons provided to and/or known by the Board for the current problems in the OOH GP service and the sources of that information.

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