



Scottish Information
Commissioner

**Decision 198/2006 Ms Sandra Uttley and the
Greater Glasgow NHS Board**

*Request for information relating to evidence provided at the
Dunblane Inquiry*

**Applicant: Ms Sandra Uttley
Authority: Greater Glasgow NHS Board
Case No: 200601294
Decision Date: 6 November 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 198/2006 Ms Uttley and the Greater Glasgow NHS Board

Request for documentation relating to evidence provided at the Dunblane Inquiry - whether information is held by the Greater Glasgow NHS Board for the purposes of the Freedom of Information (Scotland) Act 2002

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 17(1) (Notice that information is not held)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Ms Uttley asked Dr J.A Baird, who is employed by Greater Glasgow NHS Board (the Health Board), for information relating to the psychiatric evidence on Thomas Hamilton that he provided to the Dunblane Inquiry. The Health Board declined Ms Uttley's information request on the basis that it did not hold the information. The Health Board upheld its decision following Ms Uttley's request for review.

Following an investigation, the Commissioner found that the information was not held by the Health Board and that the Health Board had therefore dealt with Ms Uttley's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).



Background

1. On 16 December 2005 Ms Uttley made an information request under section 1(1) of FOISA to Dr J.A Baird, as an employee of the Health Board. Ms Uttley requested copies of all the documentation relating to Dr Baird's evidence given at the Dunblane Inquiry. Ms Uttley specifically requested the information Dr Baird examined about Thomas Hamilton's intentions on 13 March 1996 and the conclusions Dr Baird drew about Thomas Hamilton's suicide.
2. The Health Board responded to Ms Uttley's request on 19 January 2006. It stated that it did not hold the information requested. The Health Board advised that she contact the Procurator Fiscal at Stirling (whom it understood to hold the information) in this instance and supplied her with relevant contact details.
3. Ms Uttley was dissatisfied with this response and requested that the Health Board review its decision. Ms Uttley requested a review on 26 January 2006, stating that in previous conversations with Dr Baird she had gained a strong impression that he held the information sought by her.
4. On the 23 February 2006, the Health Board wrote to Ms Uttley explaining that the information she sought was held by Dr Baird in a private capacity. The information held related to work carried out by Dr Baird in his own time and with his own resources, under a private contract between Dr Baird and the Procurator Fiscal. The Health Board maintained that the information was therefore not held by it but by Dr Baird in a private capacity. The Health Board acknowledged that this should have been explained fully at the time of its initial response to Ms Uttley.
5. Again, the Health Board provided Ms Uttley with the relevant contact details for the Procurator Fiscal, whom it suggested might provide assistance.
6. Ms Uttley was dissatisfied with this response and on 29 July 2006 made an application to the Scottish Information Commissioner for a decision. Ms Uttley was asked to clarify her ground for appeal to this Office: in her response it was apparent that she felt the Health Board did hold the information that she requested.
7. Ms Uttley's application was validated by establishing that she had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to her request. The case was allocated to an investigating officer.



The Investigation

8. This Office formally contacted the Health Board on 14 September 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on the application as a whole and in particular on its assertion that it did not hold the information requested.
9. A response was received from the Health Board on 11 October 2006. The Health Board explained that Dr Baird did hold a copy of the report he had prepared together with certain background information relating to the Dunblane case but that the information was not the property of the Health Board.
10. Dr Baird had confirmed to the Health Board that this work was carried out under Category 2 of the former Consultant Contract (a new Consultant Contract was introduced on 1 April 2005).
11. The Health Board explained that Category 2 work related to consultants providing reports, observations, treatments etc for a particular purpose (e.g. a report for medical insurance) and that the consultant could charge for this work. This private work would be undertaken in the consultant's own time and would be deemed to be a private contract between the consultant and the other party. Any work in this category would, therefore, belong to the consultant and would not be held by the Health Board.
12. The Health Board explained that Dr Baird e-mailed Ms Uttley on 21 September 2005 to explain his involvement in the case, which was as an expert witness on behalf of the Crown. He had prepared a report which was submitted to the Crown and had provided oral evidence at the Inquiry before Lord Cullen.
13. The Health Board stated that Dr Baird had made it clear in an e-mail to Ms Uttley on 9 February 2006 that the work he undertook was Category 2 work, carried out under the former Consultant Contract and was therefore entirely separate from his work as an employee of the Health Board. He had reaffirmed during the review process that any information he held in this connection was held by him personally and not by the Health Board.



The Commissioner's Analysis and Findings

14. The key question to be considered here is whether the information is held by the Health Board in terms of FOISA. The information request was made to Dr Baird, who was an employee of the Health Board at the time of the request. However, Dr Baird, as a Consultant Forensic Psychiatrist, was instructed as an expert witness for the Crown Office in the Dunblane Inquiry.

Section 3(2)(a)(i)

15. Section 3(2)(a)(i) of FOISA states that for the purposes of FOISA information is held by an authority if it is held by the authority otherwise than on behalf of another person.
16. When information is present within a public authority's premises and systems only because it is held on behalf of another person or organisation, this information is not held by the public authority for the purposes of FOISA.
17. Category 2 work under the terms of the former Consultant Contract includes work requested by the courts on the medical condition of an accused or defender and attendance at court hearings as a medical witness otherwise than on his or her own behalf or on behalf of his or her employing authority in connection with a case with which the practitioner is professionally concerned.
18. Dr Baird was instructed by the Procurator Fiscal to provide expert evidence. I am satisfied that Dr Baird was not instructed to carry out this work by the Health Board, but on behalf of the Procurator Fiscal. I am satisfied that it is of the essence of such work that the person commissioning it is depending on the skills possessed by the particular individual identified as suitable for the task and that therefore, by necessity, the contract will be with that individual personally and not with his or her employer. This means that any information held by Dr Baird would be held by him privately and not as an employee of the Health Board. Any information the Health Board had in its possession would (on the basis of the definition in section 3(2)(a)(i)) not have been held by it for the purposes of FOISA (i.e. it would have been held on behalf of Dr Baird as a private individual).



19. As a result, I am satisfied that the Health Board was not (assuming it had in its possession any of the information in question) required to provide Ms Uttley with the information which she requested. As suggested by the Health Board, I would recommend that Ms Uttley make a request for the information to the Procurator Fiscal at Stirling instead.

Decision

I find that the information requested by Ms Uttley is not (and was not at the time of Ms Uttley's request) held by the Health Board and therefore that the Health Board was not under a duty to provide Ms Uttley with the information she had requested. Accordingly, it was entitled to apply section 17 of FOISA to Ms Uttley's request and dealt with the request in accordance with Part 1 of FOISA.

Appeal

Should either Ms Uttley or the Health Board wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
6 November 2006



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

1 General entitlement

- (1) A person who request information from a Scottish public authority which holds is it entitled to be given it by the authority.

3 Scottish public authorities

- (2) For the purposes of this Act ... information is held by an authority if it is held –
 - (a) by the authority otherwise than -
 - (i) on behalf of another person.

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) ... 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.