



Scottish Information
Commissioner
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Decision Notice 047/2024

COVID-19 statistics – creation of new information

Authority: Public Health Scotland
Case Ref: 202200848

Summary

The Applicant asked the Authority for COVID-19 cases, hospitalisations, and deaths by vaccination status from 12 February 2022 to 2 June 2022 in the manner previously published by the Authority. The Authority informed the Applicant that it did not hold the information. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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.

Background

1. On 2 June 2022, the Applicant made a request for information to the Authority. Among other things, the Applicant asked for details of COVID-19 cases, hospitalisations and deaths by vaccination status on a weekly basis from 12 February 2022 to the date of their request. The Applicant asked that the information be presented in the same format as previously reported by the Authority prior to 16 February 2022, and explained that they wanted the information to determine whether or not a higher proportion of the vaccinated population was represented in COVID-19 cases, hospitalisations and deaths.

2. The Authority responded on 27 June 2022 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that, from 14 February 2022, it had ceased publishing the information the Applicant referenced in their request and it provided two hyperlinks¹ to information on its website detailing the rationale for this decision.
3. On 1 July 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they considered the Authority did hold the information requested, as it had reported this exact information for the preceding period of almost two years.
4. The Authority notified the Applicant of the outcome of its review on 29 July 2022, upholding its original decision. The Authority referred to the information that it previously supplied to the Applicant, which set out the rationale for the decision to cease production of the information sought. The Authority further explained that the analysis required to produce that information had not been carried out at the time of the request. The Authority also noted that it no longer captured data in the same way and that new data linkages and bespoke analysis would be needed to recreate the previous reporting, which would require complex skill and judgement.
5. On 30 July 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review for the same reasons raised in their request for review and because the information published previously was based on an interpretation of raw data supplied by local authorities and health boards that those bodies continued to provide to the Authority. The Applicant noted that the Authority continued to report that COVID-19 vaccines were "effective at preventing a severe outcome of COVID-19" and considered if it had sufficient data to report the effectiveness of the vaccine then it must hold the information requested.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 21 September 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to the searches and enquiries undertaken by the Authority to establish what information (if any) it held falling within the scope of the Applicant's request, whether it held the "building blocks" required to generate this information and its position that complex skill and judgement would be required to recreate previous reporting.

¹ https://publichealthscotland.scot/media/11916/22-02-16-covid19-winter_publication_report.pdf and <https://publichealthscotland.scot/our-blog/2022/january/phs-reporting-of-cases-hospitalisations-and-deaths-from-covid-19-by-vaccine-status-interpreting-the-data/>

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

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

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. Section 1(6) qualifies this obligation, making it subject to other provisions of FOISA which allow authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard on the balance of probabilities. In determining where the balance lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions

14. The Authority explained that it passed the initial information request to the team which produced the section of the weekly COVID-19 Statistical Report that previously included the type of information covered by the request.
15. The Authority stated that it considered this team the appropriate subject matter experts and that the team confirmed they did not hold the information requested. Given that no other team within the Authority worked on this subject matter, the Authority explained that it did not consider it necessary to carry out further searches.
16. The Authority confirmed that it did, at the time of the request, hold the "building blocks" required to produce the information requested. However, the Authority explained that to recreate the information published previously it would have to access, link and analyse the data within several different systems.
17. The Authority noted that, at the time of the Applicant's request, it had been four months since the information requested had last been produced. In that period, the Authority described there being the following "major changes" to both national COVID-19 testing policy and vaccination data:
 - (i) COVID-19 cases: from January 2022, individuals testing positive via a lateral flow device (LFD) were no longer required to take a confirmatory PCR test. The Authority stated that lateral flow device test data would have to be incorporated from a named portal to provide information on all individuals testing positive for COVID-19

- (ii) vaccine status: from March 2022 adults aged 75 years and over, residents in care homes for older adults and severely immunosuppressed individuals were offered a COVID-19 vaccine booster. The Authority considered that COVID-19 vaccine booster data would have to be incorporated to provide vaccine status information from March 2022 onwards
 - (iii) from April 2022, free universal COVID-19 testing for the general public was no longer provided. The Authority considered this change to testing policy limited its ability to robustly identify and monitor COVID-19 cases by vaccination status and that it could not confidently compare subsequent case trends to previous data.
18. The Authority explained that “substantial bespoke analysis” would therefore be required to update and write new code to process and link the data, as well as complex skill and judgement to analyse and produce the information requested. For example:
- (i) incorporation of LFD test result data would require approval of access to the data; the logistics of access being agreed; the agreement of definitions as to what data should be included; and new code written to link and process the LFD and PCR results
 - (ii) due to the Spring 2022 vaccine booster programme, vaccination records would need to be updated before any linkage to PCR and LFD results could occur. This would require work on definitions, new code written to identify and process those vaccination records and to calculate denominators, and any other changes to vaccination records since the analysis was last produced would also need to be identified and accounted for. After those actions had been completed, the PCR and LFD test results could then be linked to the vaccination records to determine vaccine status and analysis conducted to provide weekly breakdowns of the information requested by the Applicant
 - (iii) a similar process would be required to provide information on COVID-19 hospitalisations and deaths by vaccination status.

The Applicant’s submissions

19. The Applicant explained that the information published previously by the Authority had been based on an interpretation of raw data supplied by local authorities and health boards and that those bodies continued to provide that information to the Authority.
20. The Applicant also commented that the Authority continued to report COVID-19 vaccines were “effective at preventing a severe outcome of COVID-19” and considered if it had sufficient data to report the effectiveness of the vaccine then it must hold the information requested.
21. The Applicant stated that they therefore believed that the information was still being collected by the Authority, but that it is no longer being reported on due to the negative efficacy of the COVID vaccines.

The Commissioner’s view

22. Having considered all of the relevant submissions, the terms of the request and scope of the investigation in this case, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held.

23. The Commissioner notes that the Authority's referred to his [guidance on section 17 of FOISA](#)², which states (at paragraph 46) that if compiling information in order to respond to a request would require skill and complex judgement, it is less likely the information can be said to held for the purposes of FOISA.
24. In [Decision 210/2013](#)³, the Commissioner established (at paragraph 14) that a public authority will hold information for the purposes of FOISA if it holds the "building blocks" to generate the information and no complex judgement is required to produce it.
25. While the Commissioner accepts that the Authority does hold the necessary building blocks, he is satisfied with its explanation, particularly that new code and the linking of new data sources would be required, that to produce the information requested by the Applicant would require skill and complex judgement.
26. While the Applicant believed and expected the specified information to be held by the Authority, particularly since it previously published information of the type they requested, the Commissioner is satisfied that the Authority, as a result of its decision to cease production of the information requested, does not (and did not, on receipt of the request) hold the information requested.
27. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Appeal

Should either the Applicant or the Authority 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.

Cal Richardson
Deputy Head of Enforcement

28 March 2024

² [BriefingSection17Informationnoheld.pdf \(itspublicknowledge.info\)](#)

³ [Decision 210/2013 | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

...

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.

...

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and

(c) specify –

(i) the request for information to which the requirement for review relates;

(ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and

(iii) the matter which gives rise to the dissatisfaction mentioned in subsection
(1).