



Decision Notice 056/2024

Number of full-time equivalent stoma nurses

Authority: NHS Greater Glasgow and Clyde
Case Ref: 202200701

Summary

The Applicant asked the Authority for the number of full-time equivalent stoma nurses in its Board Area within a specified period. The Authority disclosed the information requested. The Applicant believed that the Authority held more accurate information than it had provided to him. The Authority subsequently provided some different information, created after the request was received, as part of its duty to advise and assist. The Commissioner investigated and found that the Authority's response complied with FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) (4) 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 17 April 2022, the Applicant made a request for information to the Authority. Among other things, the Applicant asked for the number of full-time equivalent (FTE) stoma nurses in the Authority's Board Area from 2012 to (and including) 2022.
2. The Authority responded on 18 May 2022. The Authority explained that it did not use FTE, but provided a table of whole-time equivalent (WTE) stoma nurses and a headcount of stoma nurses for 2012 to (and including) 2022.

3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he was aware of information that indicated that the figure provided by the Authority for WTE stoma nurses for 2022 (six) was inaccurate.
4. The Authority notified the Applicant of the outcome of its review on 17 June 2022. The Authority stated that it had, in its initial response, provided the recorded information it held at the time of the request. However, having undertaken further manual checks, the Authority confirmed to the Applicant that it had 9.8 WTE stoma nurses in 2022. The Authority explained that it had only provided that information to the Applicant as part of its duty, under section 15 of FOISA, to advise and assist as the information was not held at the time of the request and was instead created from non-system sources as part of the review process.
5. On 17 June 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review for the following reasons:
 - he believed that the Authority also held different information to that provided to him on how many stoma nurses were employed by the Authority for 2012 to 2021 because it was able, after further investigation, to provide different information for 2022
 - he considered that the information would be easy to acquire, with staff in post who would know the information requested, particularly as it was "a small team with little turnover".

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 1 September 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments. The Authority provided its comments.
8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

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, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications 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 by section 1(4).

12. The standard of 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.
13. The Commissioner 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

The Authority's submissions

14. The Authority explained that the information provided in its initial response was derived from a report that used staff records from its employee support system (a national standardised people platform) where clinical nurse specialists record their specialist area. The Authority stated that it had reported to the Applicant the number of nurses who had recorded "stoma" as their specialist area.
15. The Authority explained that there were a number of reasons why this information might not fully accord with the actual number of stoma nurses, including:
 - the data is "manual in nature", as it is dependent on the nurse or their supervisor updating or populating the information in the record
 - nurses may have multiple roles or clinical responsibilities and there are nurses qualified to provide stoma care who may not be recorded as such on the employee support system.
16. The Authority therefore concluded that the information requested was not held in a consistent manner.
17. Upon receiving the Applicant's requirement for review, the Authority, in order to establish more accurate information, contacted the General Managers for each service sector to identify the number of stoma nurses for each area.
18. The Authority explained that the responses received reported the total WTE of stoma nurses for 2022 as 11.4.
19. The Authority noted that its Workforce Information team had advised that Band 3 staff were not normally included in reports to identify "nurses; excluding Band 3 staff brought the total WTE of stoma nurses for 2022 to 9.8.
20. The Authority explained that it had provided that information to the Applicant in its response to his requirement for review as part of its duty, under section 15 of FOISA, to provide advice and assistance.
21. The Authority stated that, as the information had been created from non-system sources in response to the Applicant's requirement for review, it did not consider that it was recorded information held at the time of the Applicant's request.
22. The Authority explained that to undertake the same exercise for 2012 to 2021 would, in effect, require it to create further new information (which would involve significant staff time) and that it did not consider that it was obliged to do so under FOISA.

23. The Authority noted that the Applicant's request and requirement for review had highlighted circumstances where standard reporting methods had not provided the anticipated information.
24. The Authority explained that it would undertake further enquiries with its Workforce Information and Analytics Manager to identify if any changes could, or should, be made to improve the way in which these posts are recorded, so that future requests of this type can provide an accurate position.

The Applicant's submissions

25. The Applicant explained that the stoma nurse team at the Authority was relatively small and he thought it was reasonable to expect the Authority to know how many stoma nurses it had and the FTE equivalent for the years he had specified.
26. The Applicant stated that he also thought it was reasonable to expect accurate information to be held (and to be provided) in order to understand whether there had been a decline in FTE stoma nurses while patient numbers had risen.
27. The Applicant considered that, as the Authority had provided more accurate information for 2022, then it was reasonable to expect that the same could be done for 2012 to 2021.

The Commissioner's view

28. The Commissioner recognises that the Applicant has concerns over whether the information provided to him by the Authority was accurate. The Commissioner cannot consider whether the information held by the Authority is accurate or correct, but he can consider whether it disclosed all of the relevant information it held at the time of the Applicant's request.
29. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of the request.
30. The Commissioner is also satisfied that the information the Authority provided to the Applicant in its initial response to his request was the information it held at the time of the request, as defined by section 1(4) of FOISA.
31. While the Authority subsequently provided different information to the Applicant in its response to his requirement for review, the Commissioner is satisfied with the Authority's explanation that it did not hold that information at the time of the request.
32. The Commissioner accepts that this information was created from non-system sources after the request was made and then subsequently provided to the Applicant as part of the Authority's duty, under section 15 of FOISA, to provide advice and assistance.
33. The Commissioner also accepts that the Authority is not obliged under FOISA to undertake the same exercise for the other years requested by the Applicant as this would require the Authority to, in effect, create new information.
34. The Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the request.
35. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority complied in full with the Applicant's

request. Consequently, the Commissioner is satisfied that the Authority responded to the request in accordance with Part 1 of FOISA.

36. As rehearsed earlier, the Commissioner recognises the Applicant's concern that the Authority should hold (and be able to provide) accurate information on the number of full-time equivalent (FTE) stoma nurses within its Board Area for specified years.
37. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide. Neither can he, as noted in [Decision 050/2021](#)¹ (at paragraph 23), instruct a public authority to change its record keeping systems.
38. However, the Commissioner notes that the Authority stated that it was taking steps to identify whether changes to how it obtains and organises information can be made to ensure future requests can be responded to more accurately.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

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

18 April 2024

¹ <https://www.itspubliknowledge.info/decision-0502021>

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.”
- ...
- (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.
- ...
- (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).