



Decision Notice 069/2024

Patient Needs Analysis

Authority: Scottish Ambulance Service Board
Case Ref: 202300025

Summary

The Applicants asked the Authority for a copy of the Authority's Patient Needs Analysis. The Authority withheld the information on the ground that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that the Authority was entitled to apply the exemption relating to the conduct of public affairs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); section 30(c) (Prejudice to effective conduct of public affairs); section 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 26 August 2022, the Applicants made a request for information to the Authority. They asked for a copy of the Patient Needs Analysis [PNA], a tool used by the Authority to determine patients' suitability and transport requirements in relation to patient transfers.
2. The Authority responded on 7 November 2022 following clarification from the Applicants regarding their name. The Authority told the Applicants that it sought to apply section 30(c) of FOISA as it considered that disclosure of the information would prejudice substantially its ability to carry out its business [of patient transfers].

3. On 10 December 2022, the Applicants wrote to the Authority requesting a review of its decision. The Applicants disagreed with the Authority's view that disclosure of the information into the public domain would cause harm to the public service provided by the Authority. The Applicants also said that providing the information would help the public know what the criteria were before making an application for patient transport, adding that in their view the advice available to the public was not very clear.
4. The Authority notified the Applicants of the outcome of its review on 4 January 2023. The Authority upheld the original decision.
5. On 8 January 2023, the Applicants wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicants said they were dissatisfied with the outcome of the Authority's review because they were concerned that people were being denied patient transport services unfairly and also that distress was arising (in those using the patient transport service) from having no knowledge of the questions that may be asked in the assessment interview.

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 13 January 2023, 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.
8. The Authority was also asked to send the Commissioner the information withheld from the Applicants. The Authority provided that information.
9. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all the withheld information and the relevant submissions made to him by the Applicants and the Authority. He is satisfied that no matter of relevance has been overlooked.

Withheld information

11. The Authority withheld its Patient Needs Analysis (PNA). The PNA is a decision-making tool used by the Authority to determine a patient's care needs and eligibility for the specialist transportation service it provides. Staff from the Authority use the tool for assessment purposes when a request is made from a patient or from a healthcare provider (on behalf of a patient) for their services. During the assessment, the patient is asked a series of questions from the PNA about their medical or care needs, and about their access to transport. The answers given by the patient are entered into the tool by the Authority's staff and the PNA algorithm allows those staff to determine eligibility of the patient for the specialist transportation service, or find that the patient is not eligible for such transport.

Section 30(c) of FOISA

12. The Authority withheld the PNA under section 30(c) of FOISA.

13. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
14. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.
15. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur: therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

Submissions from the Applicants

16. The Applicants were dissatisfied with the Authority's response to their request for a copy of the PNA. They believe the information should be made available to the public and they state that it is extremely unfair and unreasonable to deny patients access to the questions they will be asked in order to get patient transport.
17. The Applicants say they are aware of people who have been refused patient transport to get to hospital over 100 miles away, people who have health and care issues who have been unable to access transport to hospital appointments. They are concerned that people are being denied patient transport services because the assessment process (a telephone interview conducted by a person unknown to the patient) is distressing for patients who may become too anxious or otherwise unable to answer the assessment questions fittingly for their circumstances.
18. The Applicants say that having the assessment criteria available to the public would enable patients to be more prepared for the assessment, have support available for their assessment, and feel more empowered. They add that knowledge of the questions (in advance of the assessment) that the Authority will ask, would allow patients to be clear about the criteria for accessing patient transport.

Submissions from the Authority

19. The Authority maintained its view and continued to withhold the information under section 30(c) of FOISA.
20. The Authority submitted that disclosure of the information requested would limit, and thereby otherwise prejudice substantially its ability to provide the scheduled care ambulance service in a fair and equitable manner. It explained to the Commissioner that scheduled care resources are not simply a transport service and must be reserved for those patients who meet the eligibility criteria, i.e. patients who have a requirement for continued health care throughout their journey.
21. The Authority also explained that the PNA has been designed specifically to provide assurance that the right to access and the right to request scheduled care services is an inclusive right for everyone. It said that it worked closely with patient groups in the

development of scheduled care services, including the PNA, to understand the characteristics of disabilities and conditions which required to be accommodated, and thus ensure equity of access. It added that individuals who do not meet the required level of care provided by the Authority's scheduled care service are signposted to alternative transport providers.

22. The Authority submitted that disclosure of the requested information into the public domain carried a high risk of harm, discrimination and misuse from individuals who have prior knowledge of the questions asked in the PNA and may use the information to unfairly or dishonestly ensure that they meet the criteria. It was concerned that this would in turn lead to increased pressure on scheduled care resources, which in turn could impact on the ability of other NHS providers to carry out their services.
23. It argued that disclosure of the tool (the PNA) would render that tool null and void (because of the high risk of harm, discrimination and misuse), such that it would be necessary for the Authority then to redevelop the PNA. It told the Commissioner that the process of redevelopment would take nine to twelve months, would require engagement with a wide range of stakeholders, amendments to IT systems and additional staff training, which would place a significant burden on service delivery.
24. The Authority was asked about the publication¹ by NHS England of [information](#) on eligibility criteria for non-emergency patient transport services. Whilst the Authority acknowledged this was useful for patients, the Authority commented that the information being withheld was by it here was "significantly more detailed" and the Authority elaborated on some of the differences.

The Commissioners conclusions on section 30(c)

25. When considering the exemption provided under section 30(c) of FOISA, the Commissioner expects an Authority to be able to explain which aspects of its business would be affected by disclosure, in what way, and why. In the circumstances, the Commissioner is satisfied that the Authority's has done so, and that the provision of the scheduled care ambulance service falls within public affairs for the purposes of section 30(c) of FOISA. The Commissioner is also satisfied that disclosure would have the effect claimed by the Authority, which can reasonably be concluded to amount to substantial prejudice to the effective conduct of public affairs, and that the exemption contained in section 30(c) of FOISA does apply to disclosure of the PNA.
26. Disclosure of information under FOISA is disclosure to the world at large. That being the case, the Commissioner accepts that there is a realistic chance that some persons may use the content of the PNA to obtain patient transfer where they would not be entitled. It must be stressed that the Commissioner is not making any comment on the motives or circumstances that may lead to persons to do so, he is only observing that this is a circumstance which the Authority may encounter. The information in the PNA was, and is, currently used by the Authority to fulfil its public function: it is not information that informed a past situation but is information that is current and used by the Authority.
27. The Commissioner accepts the Authority's submissions that it must manage its limited patient transport resources appropriately and that disclosure of the PNA could undermine its

¹ <https://www.england.nhs.uk/wp-content/uploads/2022/05/B1244-nepts-eligibility-criteria.pdf>

ability to do so, and that in turn there could be secondary impacts for other, closely related, public authorities with potential to jeopardise positive public health outcomes.

28. The Commissioner considers that if the Authority was unable to rely on the proper functioning of its PNA as a result of the disclosure of the PNA to the public at large, it would harm the Authority's ability to carry out a core function (patient transport) and this would, or would be likely to, prejudice substantially the effective conduct of public affairs.
29. The Commissioner is satisfied therefore that section 30(c) is relevant and applied in the circumstances to the information being withheld.

Public interest test

30. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
31. The public interest is not defined in FOISA, but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

The Applicants' comments on the public interest

32. The Applicants were asked to provide their views on the public interest test. They told the Commissioner that knowing the criteria used in the PNA would allow them to be aware of the process, participate and challenge any equity issues.
33. With reference to patients whom they know have been refused patient transport, the Applicants said that knowing the criteria of the PNA would ensure clarity and fairness and would ensure that the Authority was being fair in upholding its responsibilities to patients.
34. They contended that knowing the PNA criteria would allow challenge and would ensure complaints were dealt with fairly and would result in a reasonable and fair service which held the Authority accountable.
35. The Applicants believed it was extremely unfair and unreasonable to deny patients access to the questions that they will be asked in order to access patient transport. They stated that debate about the fairness of the Patients Criteria for patient transfer would be in the best interests of the patients, as they may be disadvantaged due to the range of the criteria.

The Authority comments on the public interest

36. The Authority said that it recognised the requirement for transparency in how its services are delivered to ensure quality for patients and accountability with regard to the effective use of public funds.
37. The Authority also recognised that the scheduled care service provided was vital to many patients in accessing treatment for their healthcare needs and that understanding the process to access this service is important.
38. The information requested (a copy of the PNA) is the specific algorithm which the Authority uses to determine a patient's eligibility for scheduled care services. The Authority submitted that withholding this information ensured that there remained a fair outcome for all users who

request the service. The Authority added that, in its view, release of this algorithm into the public domain carried a risk that users who do not have access to this information would be disadvantaged.

39. It also argued that disclosure of the PNA could reasonably be considered to limit, and thereby otherwise prejudice substantially, the ability of it to provide scheduled care ambulance services to patients and that withholding the information ensured its services were used fairly and that the fundamental human right to health could be upheld for all individuals.
40. The Authority considered that, in this instance, the public interest must be in maintaining the ability to provide a service to all users who are eligible to access it. It argued that the release of this detailed and specific information into the public domain risks unfair outcomes for users and its ability to provide this service fairly for all users.
41. The Authority told the Commissioner it concluded, on balance, that although the algorithm may be of interest to the public it does not consider it to be in the public interest to release it.

The Commissioner's view on the public interest

42. It is clear to the Commissioner that the Applicants have a genuine interest in the service provided by the Authority, and indeed that there is wide and considerable public interest in an effective, fair and transparent patient transport service. The main aspects of the public interest that require to be considered here is the transparent and equitable allocation of transport suitability/non-suitability.
43. The Applicants have expressed their concern that, without knowledge of the questions asked during the assessment process, patients are becoming unnecessarily (and additionally) stressed, leading to some patients providing different answers to that which ordinarily would apply, and then being refused patient transport. The Commissioner accepts the Applicants' point that some persons may find the PNA interview stressful or distressing and that knowledge of the questions may (for some persons) lessen this stress. There is an obvious and high public interest in the reduction of distress amongst persons using such a service.
44. The Commissioner does, however, note that the Authority publishes some information on what patients should expect during the PNA². Furthermore, he is of the view that it seems reasonable to assume, given the PNA tool is in widespread use across the country, there will be some knowledge of the questions used amongst patients who have requested the service. Similarly, persons may have a reasonable idea of what sort of questions they would be asked in this interview, though the Commissioner acknowledges that such knowledge is not equivalent to knowing actually what will be asked or how questions may be related – or options of answering - and so on.
45. It is also clear from existing information published online by the Authority that there is an appeal mechanism in place for anyone who feels that they have been wrongly or unfairly assessed. These factors do add to the transparency in the process.
46. The Applicants submitted that knowing the questions used in the PNA will ensure clarity and fairness. The Authority submitted a counter-argument that disclosure of the PNA could result in manipulation of the tool by otherwise ineligible people to obtain scheduled care transport.

² <https://www.scottishambulance.com/our-services/support-with-appointments/need-ambulance-support-to-your-appointment/>

47. The Commissioner agrees with the Applicants that there is a strong public interest in transparency and accountability in the delivery of healthcare and transportation services. He notes that both the Applicants and the Authority seek a fair effectively functioning system of patient transport, but they differ in what they think is required in the circumstances to ensure that. Notwithstanding, he is not convinced that knowledge of every question in the PNA would necessarily improve transparency or accountability around the reasons for refusal of patient transport services.
48. He also notes that the Authority has indicated that knowledge of the information in the PNA would require it to change the PNA – though exactly how this would be possible was not elaborated on by the Authority. If such is the case, and having accepted that the exemption applied, the Commissioner is therefore reasonably required to acknowledge that the Authority would have to ensure fairness and objectivity in allocation of its resource and therefore may indeed need to consider the effectiveness of its current PNA were it to be disclosed into the public domain.
49. There is a strong public interest in ensuring that for a limited resource (patient transport) the resource is reserved for patients that meet the eligibility criteria. Similarly, there is a public interest in the Authority's ability to carry out its function of providing a fair, equitable and consistent approach to each individual who contacts it for the purpose of this service.
50. The Commissioner recognises that there is substantial public interest in ensuring that the Authority (and its related public services) can perform its functions fully, effectively, fairly and efficiently as part of an inter-connected healthcare system across the country. Although there is undoubtedly a public interest in the disclosure of the information, in this case the Commissioner does not consider it strong enough in the circumstances to outweigh the public interest in maintaining the exemption. On balance, therefore, the Commissioner is of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Decision

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

Appeal

Should either the Applicants 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.

David Hamilton
Scottish Information Commissioner

25th April 2024

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.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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).