



Scottish Information
Commissioner
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Decision Notice 078/2025

Number of adults diagnosed with autism over a specified period

Authority: NHS Fife
Case Ref: 202401547

Summary

The Applicant asked the Authority for information on the number of adults diagnosed with autism over a specified period. The Authority stated that complying with the request would exceed the £600 cost limit, so it was not obliged to comply. Following an investigation, the Commissioner accepted this.

Background

1. On 2 August 2024, the Applicant made a request for information to the Authority. Among other things, he asked for the number of adults diagnosed with autism as defined within ICD-11 within Fife for the years 2010-2020, and for the years 2021, 2022, and 2023 separately.
2. The Authority responded on 26 August 2024. It informed the Applicant, in line with section 12 of FOISA, that as it would cost in excess of £600 to fulfil his request it was not obliged to comply with it. It explained that it did not hold all of the information requested in an electronic format and a manual review of patient records, which would significantly exceed the upper cost limit under FOISA, would be required. However, it provided the Applicant with information on the number of individuals with an inpatient episode and a diagnosis of autism.
3. On 29 October 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered this information may be available in a summary or alternative format.

4. The Authority notified the Applicant of the outcome of its review on 28 November 2024, which fully upheld its original decision.
5. On the same day, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Authority's review because he believed that alternative, cost-effective solutions of providing the information requested had not been adequately explored.

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 24 December 2024, the Authority was notified in writing that the Applicant had made a valid application. 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 related to how it established complying with the request would exceed £600 and regarding potential alternative sources of identifying and providing the information requested.
9. The Authority provided comments, and the Applicant also provided further comments.

Commissioner's analysis and findings

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

Section 12(1) – Excessive cost of compliance

11. 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 £600 (see regulation 5). 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.
12. The projected costs a Scottish public authority can consider in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) it reasonably estimates it will incur in locating, retrieving and providing the information requested, in accordance with Part 1 of FOISA.
13. The authority may not charge for the cost of determining whether it:
 - (i) actually holds the information, or
 - (ii) whether or not it should provide the information.
14. The maximum hourly rate the authority can charge for staff time is £15 per hour.

The Applicant's submissions

15. The Applicant suggested that his request could be satisfied within the cost limit by:

- (i) providing a summary of the data
- (ii) searching existing databases and documents
- (iii) drawing upon existing reports
- (iv) disclosing as much information as it could gather within the cost limit.

The Authority's submissions

16. The Authority stated that it received around 4,644 referrals per year for diagnostic assessments for neurodevelopmental disorders (including autism). It explained that to provide information relating to outpatients it would need to manually, and individually, review each referral. It explained that this difficulty only applies to searches of outpatient records, because electronic recording of diagnosis for inpatients is mandatory and therefore available to extract via routine reporting without significant cost.
17. The Authority estimated that it could check around twelve health records (some of which would be extensive and complex) an hour. Over the 14-year period specified in the request, it would have to check 65,016 health records. At a rate of twelve records an hour, this would take 5,418 hours which, at an hourly rate of £15, would cost £81,270.
18. The Authority also noted that the above estimate only took into account the time taken to extract the raw data and that collating a response would take additional time.

The Commissioner's view

19. The Commissioner acknowledges that the Applicant considered the Authority should be capable of providing the information he requested without exceeding the £600 cost limit under FOISA.
20. It is not within the Commissioner's remit, in this context, to instruct a public authority to change its record keeping systems. He is required to consider whether section 12(1) of FOISA applies in this case, with regard to how the Authority has recorded the information requested, and not with regard to how the Applicant believes that information should be recorded.
21. While the Commissioner notes the Applicant's view that a summary could be provided, he considers that creating such a summary would not assist in reducing the cost of complying with the request, as the Authority would have to first identify the information, incurring the full cost of identification, before assessing and summarising it.
22. While the Applicant believed there to be some database or reporting containing the information requested, the Authority has assured the Commissioner that no monitoring is carried out from which the information requested could be derived.
23. The Commissioner accepts, given the nature of the information requested, that it would be necessary for the Authority to manually check hard copy records for each referral to confirm whether an individual had been diagnosed with autism.
24. In view of the number of referrals that would need inspected to locate and retrieve the information requested, the Commissioner is satisfied that to comply with the request would exceed the £600 cost limit under FOISA.
25. The Commissioner notes that to comply with the request without exceeding the upper cost limit would require the Authority to identify the information requested in substantially less

than a minute for each referral. In the circumstances, he does not consider that would be possible.

26. The Commissioner has considered the Applicant's suggestion that the Authority could have addressed his request by identifying and disclosing all the information it could identify within the cost limit.
27. In [Reuben Kirkham v Information Commissioner \(Section 12 of FOIA\) \[2018\] UKUT 126 \(AAC\) \(11 April 2018\)](#)¹ the Upper Tribunal found that a public authority cannot comply with the Freedom of Information Act 2000 (FOIA) by providing such information as it can find before the upper cost limit applies.
28. The Commissioner is not bound by the Upper Tribunal's findings, but he is of the view that its interpretation of the equivalent (FOIA) provisions can be taken as a reasonable guide in this case. He considers he may, in certain circumstances, question whether the searches and other measures envisaged by the public authority are excessive, and thus disproportionate, but that does not appear to be issue here (certainly not to the extent that could bring the cost of compliance within the £600 limit).
29. Considering all the circumstances, the Commissioner is satisfied that the Authority could not have complied with the Applicant's request within the £600 cost limit. Consequently, he finds that the Authority was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.

Section 15 – Duty to advise and assist

30. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
31. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms to the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](#))², is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
32. The Section 60 Code provides guidance to Scottish public authorities on the practice which Scottish Ministers consider desirable for authorities to follow in connection with the discharge of their functions under FOISA. The Section 60 Code provides (at 9.4.3):

"When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrower request would be a separate new request and should be responded to accordingly."
33. The Applicant submitted that the Authority had not provided a transparent breakdown of how it calculated that complying with his request would exceed the upper cost limit under FOISA. He considered this made it unclear what aspects of the retrieval process the Authority claimed were prohibitively expensive and whether certain parts of the request could be fulfilled at a lower cost.

¹ https://assets.publishing.service.gov.uk/media/5ae969fc40f0b631578af0c5/GIA_1055_2016-00.pdf

² <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

The Commissioner's findings

34. The Commissioner agrees that the Authority could have provided some more detail in the calculations it provided to the Applicant (e.g. regarding the number of records that would need checked and the rate at which it these records could be checked).
35. However, the Commissioner considers that the Authority was clear that the principal difficulty in this case was that the full information requested could not be extracted electronically and that to comply with the request would require a manual review of these records.
36. Generally, the Commissioner considers it appropriate for a public authority relying upon section 12 of FOISA to advise a requester of ways in which their request can be narrowed and be complied with within the cost limit.
37. In this case, having identified that it could provide information relating to inpatients within the cost limit, the Authority chose to disclose this information to the Applicant without insisting that he submit a new request for this subset of information. The Commissioner welcomes this approach.
38. In the circumstances, the Commissioner finds that the Authority complied with the duty under section 15(1) of FOISA to provide advice and assistance.

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.

Euan McCulloch
Head of Enforcement

25 March 2025