

# Decision Notice



Decision 030/2013 Mr Ken Goldie and Lothian Health Board

Patients with psoriasis treated with Biologics

Reference No: 201202054

Decision Date: 26 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Mr Goldie asked Lothian NHS Board (NHS Lothian) for information about patients in their area suffering from psoriasis who had been treated with Biologics. NHS Lothian responded by advising Mr Goldie that it did not hold any information which would fulfil his request. Following a review, NHS Lothian confirmed it did hold the information, but that it would cost too much to provide it to him. Following an investigation, the Commissioner was satisfied as to the format NHS Lothian held the information in and with the advice and assistance given to Mr Goldie.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 12(1) Excessive cost of compliance; 15 (Duty to provide advice and assistance); 17(1) Notice that information is not held

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

## Background

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1. On 6 August 2012, Mr Goldie wrote to NHS Lothian requesting the following information:
  - a) Over the twelve month period from 1 June 2011 to 31 May 2012, how many patients with psoriasis have been treated with Biologics?
  - b) Can you show, in your response, details of the types of Biologics used as well as the corresponding number of patients using each Biologic over the period in question?
  - c) How many patients were started on a Biologic for the first time (please include patients who have been switched to another Biologic during the period in question)?
2. NHS Lothian responded on 22 August 2012 and notified Mr Goldie, in line with section 17 of FOISA, that it did not hold any recorded information which would fulfil his request.
3. On 25 August 2012, Mr Goldie wrote to NHS Lothian requesting a review of its decision. He provided reasons why he believed relevant information should be held.



4. NHS Lothian notified Mr Goldie of the outcome of its review on 4 September 2012. It advised that information which would fulfil Mr Goldie's request was only held in individual patient records and, as an audit of these records (which related to around 73,296 patients attending dermatology clinics) would be required, it was seeking to apply section 12 of FOISA in view of the cost involved.
5. On 10 October 2012, Mr Goldie wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Lothian's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Goldie had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. In his application to the Commissioner, Mr Goldie accepted that it was not reasonable, in this case, to expect NHS Lothian to undertake an audit of over 73,000 patients, but queried whether the authority did not hold the requested information in summary form elsewhere. He made suggestions as to where it might be held.
8. On 12 November 2012, NHS Lothian was notified in writing that an application had been received from Mr Goldie and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, NHS Lothian was a number of questions with a view to determining where, and in what form, the relevant information was held.
9. A response was received from NHS Lothian and further submissions were sought and received during the investigation.
10. The relevant submissions received from both NHS Lothian and Mr Goldie will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Goldie and NHS Lothian and is satisfied that no matter of relevance has been overlooked.



### Information held by NHS Lothian

12. 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 certain restrictions which, by virtue of section 1(6), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. 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 it to give the applicant notice in writing to that effect.
13. In his application to the Commissioner, Mr Goldie queried whether recorded information which would fulfil his request was held in summary form, and in particular whether the Director of Pharmacy held data, independently of individual patient records, on the number and types of Biologics prescribed by the service.
14. NHS Lothian explained that, in order for it to be able to answer Mr Goldie's request, it would require access to a recording system which linked a patient with the medication they had been prescribed and had taken, and then linked this across relevant time periods. This level of detail would only be available from an electronic prescribing and administration system for medicines, which NHS Lothian did not currently have. The information, NHS Lothian submitted, was currently only held in one place within the authority, and that was in the individual patient case notes/records. The only way to extract information to be able to answer Mr Goldie's request would, therefore, be to carry out an audit of the patient case notes/records.
15. NHS Lothian explained that it was unaware of any legal duty to hold the requested information, other than as part of an individual patient record. It was aware of no internal or external guidance creating an expectation that it would hold information on the use of biological medicine for the treatment of psoriasis within a defined time period. NHS Lothian explained that its Safe Use of Medicines Policy and Procedures (December 2009) highlighted the responsibilities for establishing, documenting and maintaining an effective system to manage medicines safely and securely to meet patient needs. It considered that this contained clear guidance that "a record of all medicines prescribed and administered or supplied is maintained in the patient's healthcare record".
16. In response to Mr Goldie's query as to whether relevant information was held by the Director of Pharmacy, NHS Lothian explained that it did not carry out any searches because there was no system/database to interrogate which would have provided the relevant information. It reiterated that this level of information would only be available from an electronic prescribing and administration system for medicines, which it did not currently operate.



17. Having considered all relevant submissions, the Commissioner accepts that recorded information which would address Mr Goldie's request is (and was, at the time the authority received the request) only held by NHS Lothian in the individual patient notes or records of those patients who attended dermatology clinics. The Commissioner accepts NHS Lothian's submission that it is (and was) under no specific legal or procedural requirement to hold this information anywhere else. For these reasons, the Commissioner is satisfied that NHS Lothian advised Mr Goldie correctly that relevant recorded information was held only within individual patient files.

### **Section 15 – Duty to provide advice and assistance**

18. Section 15(1) of FOISA requires a Scottish public authority, so far as it is 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.
19. During the investigation, the investigating officer noted that Practitioner Services Division of NHS National Services Scotland (PSD) received acute medication service prescriptions for reimbursement, containing a Unique Prescription Number recorded on which it recorded on its systems. NHS Lothian was therefore asked to explain whether this meant PSD might hold a record of the medication prescribed to individual patients and, if so, why Mr Goldie was not advised to seek the requested information from PSD.
20. In response, NHS Lothian explained that PSD would not hold information linking individual treatments and the indication they were being used for within the Acute Sector (i.e. hospitals). The PSD would only have access to information from Primary Care (i.e. community), which was not relevant in this case as the medicines of interest to Mr Goldie were prescribed in specialist hospital clinics.
21. NHS Lothian submitted that if Mr Goldie had requested Primary Care information it would have referred him to PSD, but for the reasons given this would not have been appropriate in this case.
22. The Commissioner accepts the explanation provided by NHS Lothian, and is therefore satisfied that it complied fully with the duty in section 15(1) of FOISA in relation to Mr Goldie's request.

### **DECISION**

The Commissioner finds that Lothian Health Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Goldie.

Decision 030/2013  
Mr Ken Goldie  
and Lothian Health Board



## Appeal

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Should either Mr Goldie or Lothian NHS Board wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**26 February 2013**



## Appendix

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### 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.
- ...
- (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.

##### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- ...

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

##### 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

- (2) 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.

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