

Decision Notice



Decision 060/2008 Professor Walter Dean and Grampian NHS Board

Inquiries carried out in respect of a complaint about ward conditions and operations

Reference No: 200701390
Decision Date: 5 June 2008

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Summary

Professor Walter Dean asked Grampian NHS Board (NHS Grampian) for details and reports of any inquiries into ward conditions and operations at Royal Cornhill Hospital between specified dates. NHS Grampian advised that no such inquiries had been carried out, and therefore no information was held. Professor Dean believed this response contradicted information previously received from NHS Grampian. Following a review, Professor Dean remained dissatisfied and applied to the Commissioner for a decision.

After investigation, the Commissioner found that NHS Grampian did not hold any information covered by the terms of Professor Dean's request, and had therefore had dealt with his request for information in accordance with Part 1 of FOISA. However, the Commissioner found that in certain respects NHS Grampian had failed to comply with section 15 of FOISA, which requires Scottish public authorities to provide reasonable advice and assistance to an applicant. He did not require NHS Grampian to take any further action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), 15 and 17(1)

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

1. On 11 January 2007, Professor Dean wrote to NHS Grampian to ask for the following information to be provided:
 - a) Dates of all formal and informal inquiries into Royal Cornhill Hospital ward operations and/or conditions carried out by NHS Grampian between 1 January 2004 and 30 November 2006.
 - b) Copies of all such inquiry reports.



2. NHS Grampian responded on 12 February 2007 and advised Professor Dean that neither the former Grampian Primary Care NHS Trust nor NHS Grampian had carried out any inquiries (formal or informal) into ward conditions at the Royal Cornhill Hospital during the period requested. In terms of section 17(1) of FOISA, NHS Grampian provided notice that the information requested was not held.
3. Professor Dean was not satisfied with this response, and requested a review from NHS Grampian on 11 August 2007. In terms of section 20(6) of FOISA, NHS Grampian agreed to comply with this request although it was made outside the 40 working day period allowed by section 20(5) of FOISA.
4. In his request for review, Professor Dean explained that the response appeared to contradict statements in letters previously received from NHS Grampian, which had indicated that an inquiry had been held into a complaint about a particular ward within Royal Cornhill Hospital.
5. NHS Grampian replied to Professor Dean's request for review on 3 October 2007, with an apology for the delay in responding. It advised that the terminology in its response to Professor Dean's information request may have led to a misunderstanding. In that letter (12 February 2007), NHS Grampian had stated that no inquiries had been carried out: it now explained that this referred to "any full-blown inquiries" into ward conditions. It confirmed that a previous complaint from Professor Dean about a number of issues, including ward conditions, had been investigated, and included within that had been elements about ward conditions/operations. However, there had been no separate inquiries into ward conditions at Royal Cornhill Hospital. The Board therefore upheld its original response to Professor Dean's request.
6. This response did not satisfy Professor Dean, who applied to the Commissioner for a decision on the matter on 11 October 2007. Professor Dean considered that NHS Grampian had evaded his question and had refused to provide an answer in plain English.
7. Professor Dean's application was validated by establishing that he 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

8. On 20 November 2007, NHS Grampian was notified in writing that an application had been received from Professor Dean, and was invited to comment on the application and the matters raised in terms of section 49(3)(a) of FOISA.



9. NHS Grampian was asked about the distinction it had apparently drawn between an investigation into a complaint and other types of inquiry, and was asked whether notes of any investigation relating to ward conditions or operations carried out between 1 January 2004 and 30 November 2006 were in existence.
10. NHS Grampian replied on 21 December 2007. It stated that no inquiries, formal or informal, had been carried out in relation to ward operations or conditions at Royal Cornhill Hospital. It confirmed that a complaint made by Professor Dean in February 2004 had been investigated, but advised that this investigation related to specific issues surrounding his personal care and his own observations while he was a patient. NHS Grampian explained that it had drawn a distinction between the investigation of Professor Dean's complaint and other types of inquiry because the complaints investigated in relation to his stay on the ward were of a personal or general nature, and were not directly related to ward operations and/or conditions.
11. NHS Grampian advised that the only information it held about the investigation of the complaint of February 2004 was the response letter sent to the complainant (letter of 24 March 2004 from the Acting Chief Executive), together with drafts of that letter and one further piece of correspondence which had formed the basis of the response. It confirmed that there was no report of the investigation, as such.
12. NHS Grampian was asked to provide the investigating officer with copies of these documents and did so.
13. Professor Dean was given a summary of NHS Grampian's submission, and was asked whether this might answer the questions he had raised.
14. Professor Dean was not satisfied by the explanation put forward by NHS Grampian. He believed NHS Grampian had given contradictory replies as to whether certain allegations in a dossier submitted as part of a complaint had been investigated. He disputed that the complaints he had raised had all been of a personal or general nature. He provided a copy of a letter dated 20 February 2005 and headed "complaint", which was accompanied by a document setting out a series of observations relating to ward operations and/or conditions.
15. NHS Grampian was then asked whether, when responding to Professor Dean's information request, it had taken into account any investigation into the complaint Professor Dean had made on 20 February 2005. From discussions with staff at NHS Grampian, it appeared that only the response to Professor Dean's earlier complaint (February 2004) had been considered in the Board's submission to the Commissioner.
16. NHS Grampian provided copies of correspondence with Professor Dean in relation to his complaint of 20 February 2005. One letter from NHS Grampian included a heading "Abuse of conditions" under which it stated: "Your previous comments on this matter also formed part of the review carried out by the Independent Review Panel, which did not find any of your allegations to be supported by the facts *after investigation*."



17. NHS Grampian was asked to provide copies of any documents recording the Independent Review Panel's conclusions, to establish whether such information might be covered by the terms of Professor Dean's information request. NHS Grampian advised that the purpose of the Independent Review Panel is not to investigate the complaint but to determine if the complaints process has been properly carried out; and only then would it determine whether a panel hearing need be set up. In relation to Professor Dean's complaint the Panel had unanimously decided that no further action needed to be taken.
18. This decision related to Professor Dean's complaint of February 2004, rather than of February 2005, and was communicated to Professor Dean in August 2004 by the Independent Lay Convenor. Given that the Independent Review Panel's conclusions were reached prior to Professor Dean's submitting his further comments and complaint in February 2005, it is clear that these were not referred to the Panel for consideration or investigation.
19. NHS Grampian were again asked to supply any documentation relating to the Independent Review Panel's findings, or, if the Panel had not considered Professor Dean's complaints about ward operations and conditions, to confirm to the Commissioner that there was in fact no investigation into those aspects of Professor Dean's complaint which did not concern his personal treatment and care.
20. On 8 April 2008, NHS Grampian provided a file of correspondence and a further submission to the Commissioner. In its submission, NHS Grampian reiterated that no information was held about formal or informal inquiries into the Royal Cornhill Hospital ward operations and/or conditions between 1 January 2004 and 30 November 2006.
21. NHS Grampian also advised that the document submitted by Professor Dean on 20 February 2005 together with his letter of complaint had simply been noted and not treated as a complaint, so no recorded information existed about any investigation of matters raised in this document.

Commissioner's analysis and findings

22. It has taken extensive correspondence and discussion with NHS Grampian to establish whether any inquiries were carried out into ward conditions or operations at Royal Cornhill Hospital between the dates specified in Professor Dean's request. After investigation, the Commissioner is satisfied that no such inquiries were carried out, apart from those relating specifically to Professor Dean's personal care while a patient, and accordingly, NHS Grampian does not hold any information covered by Professor Dean's request. The Board therefore acted in accordance with Part 1 of FOISA by advising Professor Dean in terms of section 17(1) of FOISA that it did not hold the information requested.
23. The Commissioner wishes to comment on certain aspects of the way in which NHS Grampian dealt with Professor Dean's request.



Adequacy of search

24. Professor Dean submitted two separate complaints, in February 2004 and February 2005. His letter of 20 February 2005 referred to and enclosed a document covering a wide range of matters, including observations regarding general conditions on the ward rather than his personal care. During the investigation of Professor Dean's application to the Commissioner, it became clear that NHS Grampian had only considered whether the first complaint had generated any inquiries into ward conditions or operations, and had overlooked the fact that the second complaint might also have brought about such inquiries – and was, perhaps, more likely to do so in terms of the content of the enclosed document. Although the Commissioner has upheld NHS Grampian's view that it does not hold any information covered by Professor Dean's information request, the Commissioner finds that this could not have been established without considering the extent to which Professor Dean's second letter of complaint and the enclosed document had, or had not, been investigated.

Duty to advise and assist

25. Section 15 of FOISA requires a Scottish public authority to provide advice and assistance to a person who has asked for information, so far as it is reasonable to expect it to do so. In this case, it has proved difficult for Professor Dean (and for the Commissioner) to establish what investigations were made into the complaints he raised, and whether these included any inquiries into ward conditions or operations. Some of this difficulty has been caused by the language used by NHS Grampian in its correspondence with Professor Dean, which has led to confusion about the type and scope of investigation prompted by his complaints. For example:
- Letter of 24 March 2005 (in relation to Professor Dean's letter of 20 February) confirms that allegations about the abusive conditions in which patients were held were found (by the Independent Review Panel investigating his first complaint) to be not supported by the facts *after investigation*.
 - Response to Professor Dean's request for review (letter dated 3 October 2007) states that "following a previous complaint by yourself about a number of issues, including ward conditions, *that complaint was investigated* and a reply issued to you."
26. On the basis of these statements it does not seem unreasonable for Professor Dean to believe that an inquiry into ward conditions or operations had taken place, following his complaint. NHS Grampian's response to his request for review goes some way towards acknowledging this, by explaining that the terminology used may have contributed to a misunderstanding. In that letter NHS Grampian explained that no "full-blown" or "separate" inquiries into ward conditions had been carried out. However, confusingly, the letter also says that a complaint about a number of issues, including ward conditions, had been investigated. NHS Grampian did not explain why this investigation, which apparently included ward conditions, was not considered relevant to Professor Dean's request for details of "all formal and informal inquiries...into Royal Cornhill Hospital ward operations and/or conditions".



27. The Commissioner has found that the investigation of Professor Dean's complaint did not (as far as it has been possible to establish) include any investigation of ward conditions or operations except as these related to Professor Dean's personal care while a patient. It would have been helpful for NHS Grampian to have been more open with Professor Dean about the extent of the investigations into his complaints, as this would have allowed him to understand more accurately what information might or might not be held by NHS Grampian in relation to his request. In particular, NHS Grampian has never made it clear to Professor Dean that the document he submitted in February 2005 was not treated as an integral part of his letter of complaint and, accordingly, there has been no investigation of the matters raised in it.
28. The Commissioner finds that in failing to provide such reasonable advice and assistance to Professor Dean, NHS Grampian failed to comply fully the duty contained in section 15 of FOISA.

DECISION

The Commissioner finds that Grampian NHS Board partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Professor Walter Dean.

The Commissioner finds that by advising Professor Dean that it did not hold the information he had asked for, NHS Grampian complied with Part 1 of FOISA and particularly section 17(1).

However, the Commissioner finds that NHS Grampian failed to provide Professor Dean with advice and assistance that would reasonably have been expected, in relation to his information request. In failing to provide such advice and assistance, NHS Grampian failed to comply with section 15 of FOISA.

As it has now been explained why NHS Grampian does not hold the information requested by Professor Dean, the Commissioner does not require NHS Grampian to take any action in response to this failure.

Decision 060/2008
Professor Walter Dean
and Grampian NHS Board



Appeal

Should either Professor Dean or NHS Grampian 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.

Kevin Dunion
Scottish Information Commissioner
5 June 2008



Appendix

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.

(...)

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

- (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.