

Decision Notice

Decision 091/2017: Mr Paul Dick and Tayside Health Board

Adoption of SIGN-NICE guidelines

Reference No: 201700288

Decision Date: 5 June 2017



Scottish Information
Commissioner

Summary

NHS Tayside was asked about the adoption of guidance from SIGN and NICE (both providers of practice guidance in the health sector) or of any other published sources of guidance.

In response, NHS Tayside provided some information, including links to information that was publicly available. It stated it held no other recorded information.

Following an investigation, the Commissioner was satisfied that NHS Tayside did not hold any further information falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 26 May 2016, Mr Dick made a request for information to Tayside Health Board (NHS Tayside). The information requested was minutes, agendas, memos, emails, notes and any other relevant recorded information relating to the adoption of SIGN (Scottish Intercollegiate Guidelines Network), NICE (National Institute for Health and Care Excellence) or any other published sources of guidance within NHS Tayside. Mr Dick explained that he would expect to receive Board-level information stating that guidance sources will or will not be used within NHS Tayside, how these documents will be used, how their use will be monitored, any monitoring of their use and monitoring of their distribution. He confirmed he was not seeking the operational documents. For any Board minutes that were routinely published, Mr Dick expected to receive the location of any published documents.
2. NHS Tayside acknowledged receipt of Mr Dick's request on 8 June 2016.
3. On 3 August 2016, NHS Tayside asked Mr Dick to confirm the timeline for his request, in order to determine how far back it needed to search for the information requested.
4. Mr Dick responded on 4 August 2016, confirming that, for Board minutes and agendas, all records held should be searched as these should be held in a manner that was easily searchable. For emails, he asked that these be searched as far back as electronic records were held, since the effort in searching emails in a single system was similar regardless of the time period. Mr Dick asked that these searches be restricted to Board members, directors and other committee members with responsibility over NHS Tayside policy. He further clarified that the information he was seeking related to the Board or senior officers setting policy on the use of SIGN, NICE and other guidance, and the monitoring of the adoption of published guidance within NHS Tayside.

5. NHS Tayside responded on 16 August 2016. Referring to updates given to the Board in August 2014 and to the Clinical and Care Governance Committee in May 2016, NHS Tayside explained these included information on SIGN-NICE guidelines. NHS Tayside provided Mr Dick with links to where this information could be accessed online, stating the minutes of the corresponding meetings were also publicly available on its website.
6. On 26 August 2016, Mr Dick wrote to NHS Tayside, requesting a review of its decision on the basis that there had been no apparent attempt to recover information contained with emails, notes or other recordable media.
7. NHS Tayside notified Mr Dick of the outcome of its review on 11 October 2016, modifying its original decision. It accepted that a full response had not been provided as it had failed to address the request insofar as it related to emails, notes or any recorded information. NHS Tayside informed Mr Dick of a communication identified as being relevant to his request and described how this had been disseminated to staff. It confirmed that searches of email accounts of those with responsibility for NHS Tayside policy had identified no further documents, emails or recordable media falling within the scope of his request.
8. On 14 February 2017, Mr Dick wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr Dick stated he was dissatisfied with the outcome of NHS Tayside's review because he did not believe there were no emails, minutes, memos or notes relating to the adoption of SIGN guidance held by any member of any relevant committee.

Investigation

9. The application was accepted as valid. The Commissioner confirmed that Mr Dick had made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
10. On 28 February 2017, NHS Tayside was notified in writing that Mr Dick had made a valid application and the case was allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Tayside was invited to comment on this application and answer specific questions. These focused on the searches carried out to identify and locate any information held by NHS Tayside and falling within the scope of Mr Dick's request.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Mr Dick and NHS Tayside. She is satisfied that no matter of relevance has been overlooked.

Whether NHS Tayside held any further information

13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
14. The standard 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. She 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.

15. In its submissions to the Commissioner, NHS Tayside confirmed that it held no further information falling within the scope of Mr Dick's request. It provided copies of emails instigating searches for information at the times it considered both Mr Dick's request and his requirement for review.
16. NHS Tayside explained that, at the time it considered Mr Dick's original request, the following members of staff had been asked to conduct searches for any relevant information held, using the search parameters "SIGN", "NICE" and "guidance" –
 - General Manager (Special Services Directorate)
 - General Manager (Medicine)
 - Associate Director of Clinical Governance and Risk Management
 - Nurse Director
 - Associate Nurse Director
 - Chief Operating Officer
 - Medical Director
 - Board Secretary
 - Committee Support Officers with responsibility for committees/groups within NHS Tayside (including the Head of Corporate Secretariat).
17. NHS Tayside submitted that, had the information requested been received for action by the authority, they would have had to be considered by either a Governance Committee or a Management Group, all of which are supported by a Committee Support Officers. These officers could therefore search for all items considered by these committees/groups.
18. NHS Tayside further explained that its Head of Corporate Secretariat oversees the work of the Chief Executive's, Chairman's and Board Secretary's offices. All correspondence received by the authority for corporate action would be filtered through these offices and subsequently issued to the relevant service for action, where any action required is tracked for progress.
19. These searches, NHS Tayside submitted, identified an update provided to the Board concerning Clinical Governance in Practice, which referenced SIGN-NICE guidelines as part of the performance review process, and a report on Clinical Governance and Risk Management provided to the Clinical and Care Governance Committee, which also referred to SIGN-NICE guidelines. As this information was available on NHS Tayside's website, it provided Mr Dick with links to where it could be accessed online.
20. NHS Tayside explained that, at the time it considered Mr Dick's requirement for review, email systems were searched by the Committee Support Officers and Head of Corporate

Secretariat for documents received by the authority and reference to the documents within committee/group papers. The Chief Executive's, Chairman's and Board Secretary's NHSmail inboxes were also searched. The request was also forwarded to the Associate Director of Clinical Governance and Risk Management.

21. At that stage, a further document was identified as having been received by the Chief Executive from Healthcare Improvement Scotland concerning "SIGN 153 British Guideline on the Management of Asthma", published in October 2016. NHS Tayside explained that this was forwarded onto Clinical Governance and Risk Management for dissemination to appropriate managers, with further instruction to cascade to staff within their area of responsibility. Clinical Governance Chairs were asked to ensure that this guideline was on the clinical governance agenda. NHS Tayside confirmed that this explanation was provided to Mr Dick in its review response.
22. In its submissions to the Commissioner, NHS Tayside confirmed that all Board and Standing Committee papers are published on its website, as required by its Code of Corporate Governance. It explained that minutes recording debate, actions and decisions agreed are required to be produced for every Board, Standing and Advisory Committee, in line with its Records Management Protocol for Board, Standing and Advisory Committee Records.
23. NHS Tayside explained that in addition to individual inboxes, correspondence can also be stored in shared drives. Hard copy information received is scanned and saved to a shared drive, and forwarded by email to the relevant individual for action (the latter would also be retained in email archives).
24. In addition to searches of email (including email archives), NHS Tayside confirmed that searches were conducted of committee papers, Staffnet (NHS Tayside intranet) and its Electronic Document Store, using the search terms "SIGN", "SIGN Guidelines" and "SIGN Guidance".
25. NHS Tayside confirmed that, other than the information already provided to Mr Dick, no emails, notes or other recorded media were identified as a result of the searches carried out.
26. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that NHS Tayside took adequate, proportionate steps to establish whether it held any further information that fell within the scope of Mr Dick's request. She accepts that any information relevant to the request would have been identified using the searches described by NHS Tayside. She is therefore satisfied, on the balance of probabilities, that NHS Tayside does not (and did not, on receiving the request) hold any further information falling within the scope of Mr Dick's request.

Decision

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

Appeal

Should either Mr Dick or Tayside Health Board 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.

Margaret Keyse
Acting Scottish Information Commissioner

5 June 2017

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.

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