

Decision Notice 112/2020

Use of SafeMedicate

Applicant: The Applicant

Public authority: University of the West of Scotland

Case Ref: 202000200



Scottish Information
Commissioner

Summary

The University was asked about the use of a system called SafeMedicate in University assessments and the moderation of results. The University provided some information and advised, in terms of section 17(1) of FOISA, that no further information was held.

An application was made to the Commissioner, questioning whether the University held more information. Following an investigation, the Commissioner was satisfied that the University had carried out appropriate searches and disclosed all the information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

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 16 April 2019, the Applicant made a wide-ranging request for information to the University of the West of Scotland (the University). The request sought information relating to the use of SafeMedicate in University assessments, including the moderation or adjustment of student results, the delay in SafeMedicate results being communicated to students and the availability of a paper copy of the exam.
2. The University wrote to the Applicant on 24 April 2019. It summarised the correspondence the Applicant had had with the University and other bodies about the use of the SafeMedicate system and notified him that it was refusing to comply with his request as it considered it to be vexatious, in terms of section 14(1) of FOISA.
3. On 24 and 25 April 2019, the Applicant wrote to the University, requesting a review of its decision as he did not agree that his information request was vexatious.
4. The University notified the Applicant of the outcome of its review on 26 April 2019. The University maintained its position that his request was vexatious and upheld its application of section 14(1).
5. On 5 May 2019, the Applicant wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University's review because he did not agree that his information request was vexatious.
6. On 29 October 2019, the Commissioner issued *Decision 158/2019: The Applicant and the University of the West of Scotland*. This decision found that the request was not vexatious and the Commissioner required the University to carry out a new review, in terms of section 21(4)(b) of FOISA, by 13 December 2019.
7. The University notified the Applicant of the outcome of its review on 2 December 2019. It advised the Applicant that some of the information requested would be his own personal data

and was therefore withheld under section 38(1)(a) of FOISA. It provided him with some personal data, and also explained his rights, under the General Data Protection Regulation (the GDPR).

8. In relation to those parts of the request the University considered under FOISA, it provided the Applicant with some information. For the remaining parts of the request, the University provided the Applicant with notice in terms of section 17(1) of FOISA, informing him that the information requested was not held.
9. On 7 February 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University's review because he believed it should hold the information he had requested and that not all of the relevant information had been identified.
10. The Applicant provided detailed reasoning as to why he considered the information requested should be held by the University.

Investigation

11. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
12. On 14 February 2020, the University was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
13. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 16 March 2020, the University was invited to comment on this application and to answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
14. The University responded, providing submissions in support of its position that, other than the information already provided to the Applicant, it did not hold information falling within the scope of the Applicant's request.
15. The Applicant provided further submissions as to why he considered the information requested should be held by the University.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

Information held by the University

17. 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 qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
18. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant

believes the authority should hold, although the Applicant's reasons may be relevant to the investigation of what is actually held. 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.

19. 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 lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He 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 as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
20. As stated in many previous decisions, the Commissioner's remit extends only to consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA (or, where appropriate, the Environmental Information (Scotland) Regulations 2004) in responding to a request. The Commissioner cannot comment on whether a public authority should have taken particular action or, if it has, what records it should maintain in relation to that action.
21. The Commissioner notes the various submissions provided by the Applicant, in which he provided reasons why he considered the University should hold the requested information. He provided the Commissioner with various communications with the University (and other organisations) regarding the subject matter, emphasising that, in his view, the University had a duty to record and hold the information he had requested. He provided detailed background information regarding the reasons for his communications. The Commissioner does not find it necessary to set out the full background detail here.
22. In its submissions to the Commissioner, the University submitted that, in its opinion, the Applicant believed it had the ability to alter student results on the SafeMedicate system. It did not agree, and explained why.
23. The University provided detailed reasoning as to why it did not hold the information requested, confirming that it had provided the Applicant with such information as it did hold when it responded to the requirement for review.
24. The University confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of those parts of the Applicant's request which are subject to this investigation. The University provided details of the relevant searches, which included searches of relevant email records and consultation with relevant staff. The conclusion of these searches and enquiries was that no information was held, other than that provided to the Applicant with the review outcome (either under FOISA, or to him as an individual under the GDPR).
25. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the University interpreted the Applicant's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations and other submissions provided, the Commissioner is satisfied, on the balance of probabilities, that the University held no information falling within the scope of the Applicant's request, in addition to that identified in the University's review outcome. For those parts of the request in respect of which it held no information, the University was correct to give the Applicant notice to that effect, in terms of section 17(1) of FOISA.

Decision

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

Appeal

Should either the Applicant or the University 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
Head of Enforcement

28 September 2020

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.

...

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.

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