

Decision Notice



Decision 241/2011 Dr David Leung and Fife Health Board

Handling of complaint

Reference No: 201101554

Decision Date: 6 December 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

Dr Leung requested from Fife Health Board (NHS Fife) information relating to a specific complaint. NHS Fife responded by providing some information to Dr Leung, while withholding other information which had been provided previously. Following a review, as a result of which NHS Fife provided the information previously provided, Dr Leung remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that NHS Fife had dealt with Dr Leung's request for information in accordance with Part 1 of FOISA, by providing him with the information it held falling within the scope of his request. He did not require NHS Fife to take any action.

Relevant statutory provisions and other sources

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 17 April 2011, Dr Leung wrote to NHS Fife requesting all documentation and correspondence it held in respect of a particular complaint. He stated that the request included all forms of correspondence, board minutes, emails, letters, memoranda, handwritten notes, case notes, reports, forms and drafts (letters, memoranda, reports etc); stipulated that it covered the period 1 May 2010 to 18 April 2011, and specifically stated that it should include any relevant information held by named personnel and all non-executive directors.
2. NHS Fife responded on 20 May 2011, informing Dr Leung it was providing all relevant correspondence and other documentation held and covered by his request. It confirmed that all personnel mentioned in his request had been contacted and that it was not providing certain information he had been provided with previously.



3. On 26 May 2011, Dr Leung wrote to NHS Fife requesting a review of its decision. In particular, he argued that it would not be appropriate to consider the information previously provided as complete. He also noted that there appeared to be little or no correspondence from the non-executive directors.
4. NHS Fife notified Dr Leung of the outcome of its review on 6 July 2011. It confirmed that nothing had been added to or altered in the documentation provided previously, but provided a further copy of that information to Dr Leung. NHS Fife also confirmed the non-executive directors had been contacted and all information they held had been provided.
5. On 26 July 2011, Dr Leung further wrote to NHS Fife requesting a further review. He identified certain specific information referred to in a statement, which he believed should have been provided.
6. On 4 August 2011, NHS Fife responded to the effect that it was under no obligation to conduct a further review and Dr Leung was informed of his right to make an application to the Commissioner.
7. On 22 August 2011, Dr Leung wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Fife's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. He later clarified his application on 1 September 2011.
8. The application was validated by establishing that Dr Leung 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

9. On 19 September 2011, the investigating officer notified NHS Fife in writing that an application had been received from Dr Leung, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, NHS Fife was asked to explain the steps it had taken to identify and locate the information Dr Leung had requested.
10. NHS Fife responded to the effect that all relevant information it held had been provided to Dr Leung, providing an explanation of the steps taken to establish this.
11. Dr Leung's application to the Commissioner relates to the two matters raised in his request for review, i.e. that he had not been provided with certain comments of a staff member (as referred to in a subsequent statement) and was not satisfied that all information held by non-executive directors had been provided.
12. The relevant submissions obtained from Dr Leung and NHS Fife will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Dr Leung and NHS Fife and is satisfied that no matter of relevance has been overlooked.

Information held by NHS Fife

14. 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) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions referred in section 1(6) are not under consideration 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).
15. The Commissioner is satisfied that were NHS Fife to hold any recorded comments as described in his request for review, or any relevant information held by non-executive directors, such information would fall within the scope of Dr Leung's request of 17 April 2011.
16. In its submissions to the Commissioner, NHS Fife explained (with details) that it had carried out specific searches and enquiries to confirm what information it held and that all information located had been provided to Dr Leung. It confirmed that no further relevant information was held. Having considered these submissions, the Commissioner is satisfied that these searches were adequate in the circumstances.
17. Having considered all relevant submissions and the terms of the request, therefore, the Commissioner accepts that NHS Fife interpreted Dr Leung's request reasonably and took adequate steps to identify, locate and provide any information it held and which fell within the scope of that request.
18. In all the circumstances, therefore, the Commissioner is satisfied that NHS Fife held no information falling within the scope of Dr Leung's request, in addition to that it provided to him in response to that request. Consequently, he is satisfied that it responded to the request in accordance with section 1(1) of FOISA.

DECISION

The Commissioner finds that Fife Health Board (NHS Fife) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr Leung.

Decision 241/2011
Dr David Leung
and Fife Health Board



Appeal

Should either Dr Leung or NHS Fife 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
6 December 2011



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.
- ...
- (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.
- ...