



Scottish Information
Commissioner

Decision 072/2006 Mrs Lorna Watson and Glenfield Medical Practice
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<i>Request for code of practice and policy document on the removal of patients from the practice patient list</i>

Applicant: Mrs Lorna Watson
Authority: Glenfield Medical Practice
Case No: 200502324
Decision Date: 04 May 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 072/2006 Mrs Lorna Watson and Glenfield Medical Practice

Request for code of practice and policy document on the removal of patients from the practice patient list – the Commissioner found that the Practice did not handle Mrs Watson's request for information correctly under section 1 of the Freedom of Information (Scotland) Act 2002.

Facts

Mrs Watson asked Glenfield Medical Practice (the Practice) to provide her with copies of the code of practice and policy document used by the Practice to guide it in the removal of patients from its list.

The Practice did not respond initially, but upon Mrs Watson's request for review, it provided her with a copy of its general information leaflet, which contains a statement relating to the removal of patients, but did not provide a covering letter.

Mrs Watson was not satisfied with this response and wrote to the Practice again, stating that the leaflet did not fulfil her request, as she felt a full policy document would provide additional reasons for removing patients from the Practice list.

The Practice did not reply to Mrs Watson's letter and she then appealed to the Commissioner for a decision.

Outcome

The Commissioner found that the Practice did not handle Mrs Watson's request for information correctly, in that it breached section 10 of the Freedom of Information (Scotland) Act 2002 (FOISA) in failing to respond to her information request within 20 working days.



He also found that the Practice breached part 1 of FOISA, in failing to provide a written response to Mrs Watson's request for review which confirmed that it held a copy of the GMS contract between NHS Borders and the Practice containing policy information relevant to her request, along with an explanation that this was exempt under section 25 of FOISA.

Finally, he found that the Practice breached section 21(10) of FOISA in failing to inform Mrs Watson of her right to appeal to him in the event that she was dissatisfied with the way in which it handled her request for information.

He required the Practice to contact Mrs Watson to ascertain if it is possible for her to access the generic GMS contract available on the internet, or if she would require a copy of the relevant section to be printed off and sent to her.

Appeal

Should either the Practice or Mrs Watson wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 8 June 2005, Mrs Watson wrote to the Practice. Part of her letter stated that she had telephoned the practice on 7 June 2005 to request a copy of the Practice's code of practice and its policy on the removal of patients from its list, and that she looked forward to receiving them as soon as possible.
2. The Practice wrote to her on 9 June 2005 acknowledging receipt of Mrs Watson's letter and stating that it would receive urgent attention.
3. Mrs Watson wrote to the Practice again on 21 July 2005 stating that she had not received any further contact from the Practice or the information she had requested. She enclosed a transcript of a telephone call she had made to the Practice on 6 June 2005.



4. On 1 August 2005, Mrs Watson received a copy of the Practice leaflet, which contains a brief statement regarding removal of patients from the Practice list. This states that GPs do not have to give a reason for removing patients from the list, but that it is rare, and that patients will be given a warning before this happens.
5. Mrs Watson wrote to the Practice on 1 August 2005 stating that this did not fulfill her request, since she was interested in the guidelines followed by the Practice when making a decision to remove a patient from the list. Mrs Watson was sure that a full policy document on this subject would include additional reasons for removing patients from its list.
6. She received no further correspondence from the Practice and submitted an application to my Office for a decision in relation to her information request on 23 September 2005.
7. The case was then passed to an investigating officer.

The Investigation

8. In order to proceed, it was first of all necessary to establish whether Mrs Watson had made a request to a Scottish public authority listed in schedule 1 of FOISA (i.e. the Practice), and had appealed to me only after requesting the Practice to review its response to his request.
9. As outlined in points 1 to 6, Mrs Watson made an initial information request and request for review of its responses over the period from 8 June 2005 to 23 September 2005, and on each occasion allowed 20 working days for a reply.
10. Her initial written request of 8 June, summarised in point 1, confirms the points she had made by telephone the previous day and states clearly what information she expects to receive in response. I am satisfied that Mrs Watson's letter of 8 June 2005 is a valid information request.
11. As mentioned above, as part of the investigation, I had to establish whether the Practice was a body listed in Schedule 1 of FOISA. Paragraph 33 of Schedule 1 covers, amongst others, a person providing general medical services under a general medical services contract (within the meaning of the National Health Services (Scotland) Act 1978), but only in respect of information relating to the provision of those services.



12. I established from the Practice Names Lookup file (http://www.isdscotland.org/isd/files/QOF_Scot_200405_Septrelease_Practice_Name_Lookup.xls) produced by Information and Statistics Division Scotland (part of the Common Services Agency for the Scottish Health Service) that the Practice is involved in the provision of general medical services under a general medical services contract under the National Health Service (Scotland) Act 1978.
13. A subsequent search for details of the general medical services (GMS) contract showed that a standard version of it was available at [http://www.show.scot.nhs.uk/sehd/pca/PCA2004\(M\)07.pdf](http://www.show.scot.nhs.uk/sehd/pca/PCA2004(M)07.pdf). Clauses 192-209 of the contract set out the procedures to be followed in removing a patient from a Practice list. Whilst this is not the actual contract between NHS Borders and the Practice, I note that it contains all of the mandatory terms and conditions for the general medical services contract that are required by virtue of the Primary Medical Services (Scotland) Act 2004 and the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 and further terms and conditions which, although not required, are strongly recommended to all NHS Boards. I further note from point 22 of the Scottish Executive circular dated 30 March 2004, which introduces the contract, that clauses 192-209 do not require to be altered.
14. The information requested by Mrs Watson concerned the policy and procedure followed when the Practice removed patients from its list, i.e. information relating to termination of a Practice's responsibility for a patient. Such a circumstance is provided for in the GMS contract, as shown above.
15. In this regard, I consider the definition of information relating to the provision of general medical services to include policies and procedures relating to occasions when the Practice saw fit to remove patients from its list and thereby terminate a Practice's responsibility for a patient.
16. Taking this information into account, and noting that the definition of "person" under the Interpretation Act 1978 includes a body of persons corporate or unincorporate, I am satisfied that the Practice falls within the definition of a Scottish public authority under FOISA in relation to the information requested by Mrs Watson. Accordingly, I am satisfied that Mrs Watson's application to me is valid.
17. A letter was sent to the Practice on 17 October 2005 confirming that a valid application for a decision had been received from Mrs Watson, and inviting it to comment, in terms of section 49(3)(a) of FOISA.
18. I also asked the Practice for a copy of any policy and guidance documents on removing patients from its list which have been created by it, along with reasons for its lack of response to Mrs Watson's initial request and request for review.



19. In its response, the Practice provided me with a copy of its general information leaflet which it stated contained the Practice's own policy and procedure used by it in removing patients from its list. The Practice also confirmed that it held a copy of the GMS contract between itself and NHS Borders, which it considered to be a private agreement between the Practice and NHS Borders. It also explained that when Mrs Watson had telephoned the Practice she quoted parts of the generic GMS contract referred to in point 15, and it considered this to be sufficient proof that she had access to the GMS contract policy information that she had already requested. It stated that, to the best of its knowledge, it had replied to Mrs Watson's request, by providing her with a copy of the Practice leaflet and telling her on the phone that more information was available from NHS Borders under the GMS contract.
20. The Practice also stated that it felt it did not need to respond further to Mrs Watson's requests once she had been provided with the leaflet and had been directed to NHS Borders for further information as it considered that Mrs Watson had access to all of the information held by the Practice governing removal of patients from its list. This was also in line with advice which the Practice had received from the Medical and Dental Defence Union of Scotland (MDDUS), dated 11 August 2005. A copy of the letter from the MDDUS was provided to me by the Practice.

The Commissioner's Analysis and Findings

21. In considering Mrs Watson's appeal it is necessary first of all to consider what documentation exists to govern the removal of patients from the Practice's list. This will then allow me to determine if Mrs Watson's request for information was handled in the correct manner.
22. It is clear to me from the evidence provided by the Practice that it uses two main sources to guide it in removing patients from its list: a leaflet containing a statement on the removal of patients, which is produced by the Practice itself, and the GMS contract between it and NHS Borders. The GMS contract provides the detailed procedure to be followed if a patient is to be removed from the Practice list, and a standard copy of this contract is available to the public as detailed above. Both the leaflet and the GMS contract are held by the Practice.
23. The Practice stated to me that it provided Mrs Watson with a copy of its own leaflet and verbally directed her to NHS Borders for more information under the GMS contract, by means of two telephone calls between her and the Practice.



24. Under section 1(1) of FOISA, a person who requests info from a Scottish public authority which holds it is entitled to be given it by the authority, subject to any of the exemptions contained in Part 2 of FOISA. In addition, a person who makes an information request under section 1(1) of FOISA is entitled to be told whether the public authority holds the information (subject to the restrictions contained in section 18) and to be provided with a copy of that information, again subject to any of the exemptions contained in Part 2 of FOISA.
25. The Practice did not advise Mrs Watson that it held a copy of the contract with NHS Borders. The Practice has told me that it considers this contract to be a private agreement between it and NHS Borders, but it did not rely on any exemption to withhold the contract from Mrs Watson. I understand that this was because Mrs Watson had quoted from sections of the generic contract, which led it to conclude that she had access to the information she required.
26. Considering that clauses 192-209 of the generic contract cited in point 15 do not need to be altered, these will be the same as that in the Practice's version. As the generic contract is available on the Internet, I would consider the equivalent clauses in the Practice's version of the contract to be in the public domain and otherwise accessible. These clauses are therefore exempt under section 25(2)(a) of FOISA, and did not require to be provided to Mrs Watson.
27. The Practice did, however, have a duty to confirm in writing, under section 16(1) of FOISA, that it held a copy of the GMS contract containing the section relevant to her request and to explain the exemption under which the contract was being withheld and why. Given that the Practice thought that Mrs Watson had a copy of the contract, the relevant exemption would apparently have been section 25(2)(a) as mentioned above, although it would have been good practice to check with Mrs Watson that she did in fact have a copy of the contract before proceeding on this basis.
28. In doing so, the Practice would also have a duty to advise and assist Mrs Watson under section 15 of FOISA, and I would consider the provision of a note of the generic contract clauses relevant to the request, a note of the direct web address of the document, and an offer to provide a copy of the relevant clauses if Mrs Watson has no access to the Internet, to satisfy this requirement.
29. In failing to provide Mrs Watson with a written confirmation that it held a copy of the GMS contract between itself and NHS Borders, and an explanation of why the contract was being withheld, I find that the Practice partially breached section 1(1) of FOISA.



Technical breaches of the Act

30. From the events summarised in points 1 to 6 of this decision, it is clear that the Practice did not respond to Mrs Watson's initial request for information within twenty working days, but that she received the leaflet on 1 August 2005, 7 working days after her first request for review.
31. The leaflet was sent to Mrs Watson without a covering letter to apologise and explain why there had been a delay in responding to her request. The provision of such a letter is not only good practice, but is required under section 21(5) of FOISA.
32. Under section 21(10) of FOISA, a response to a request for review must contain particulars about the rights of application to me and of appeal conferred by sections 47(1) and 56 of FOISA. In failing to respond to Mrs Watson's request for review, the Practice also failed to inform her about this right of appeal and breached section 21(10) of the Act.

Decision

I find that the Glenfield Medical Practice (the Practice) did not comply with Mrs Watson's information request for information in line with Part 1 of FOISA, in that it breached section 10 of the Freedom of Information (Scotland) Act 2002 (FOISA) in failing to respond to her information request within 20 working days.

I also find that the Practice breached Part 1 of FOISA, in failing to provide a written response to Mrs Watson's request for review which confirmed that it held a copy of the GMS contract NHS Borders and the Practice, containing policy information relevant to her request, along with an explanation that this was exempt under section 25 of FOISA.

Finally, I find that the Practice breached section 21(10) of FOISA in failing to inform Mrs Watson of her right to appeal to me in the event that she was dissatisfied with the way in which it handled her request for information, and in failing to advise her of her subsequent right to appeal to the Court of Session.

I require the Practice to contact Mrs Watson to ascertain if it is possible for her to access the generic GMS contract available on the Internet, or if she would require a copy of the relevant section to be printed off and sent to her.



I cannot require the Practice to take any action until the time allowed for an appeal to be made to the Court of Session has elapsed. I therefore require the Practice to contact Mrs Watson within 42 Days of the date of this decision notice.

Kevin Dunion
Scottish Information Commissioner
04 May 2006