

Decision Notice



Decision 102/2010 Mr K and Greater Glasgow & Clyde NHS Board

Times and lengths of phone calls

Reference No: 201000626

Decision Date: 18 June 2010

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Kevin Dunion

Scottish Information Commissioner

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St Andrews KY16 9DS
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Summary

Mr K asked Greater Glasgow & Clyde Health Board (NHS Greater Glasgow & Clyde) to supply information about the times and lengths of phone calls made from a particular room during a specified period. NHS Greater Glasgow & Clyde advised that the information was not held, and upheld this decision after review. Mr K subsequently applied to the Commissioner for a decision.

The Commissioner found that NHS Greater Glasgow & Clyde had dealt with Mr K's request for information in accordance with Part 1 of FOISA, by issuing a notice in terms of section 17 of FOISA that it did not hold the information requested.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 27 December 2009, Mr K wrote to NHS Greater Glasgow & Clyde enclosing correspondence between himself, NHS Greater Glasgow & Clyde and another Scottish public authority, and asked for the information he had requested to be sent to him.
2. On 9 January 2010, in response to a request for clarification (5 January 2010), Mr K explained that he was looking for the times and lengths of phone calls made between 4 pm and 8 pm on 11 September 2006, from the room where his wife had been spoken to by two named individuals. He stated that he had already been advised that calls were not recorded, but had been given times and lengths of phone calls made during the same period from another extension, so believed that the information should be available.



3. On 10 February 2010, NHS Greater Glasgow & Clyde responded to Mr K's request. NHS Greater Glasgow & Clyde explained that the information previously provided about the times and lengths of phone calls from another extension had been obtained from the archived records of its telecommunications service provider. It stated that, in relation to his current request, Mr K had not told NHS Greater Glasgow & Clyde which room or extension he was asking about, although he had been asked to provide this information.
4. NHS Greater Glasgow & Clyde advised that it could approach its telephone provider to supply details of calls made from specific extensions, but would not be able to say with any certainty whether the calls had been made by either of the named individuals. NHS Greater Glasgow & Clyde gave Mr K notice (as required by section 17(1) of FOISA) that it did not hold the information he had asked for. It also advised that information from the phone records might also be exempt from disclosure under section 38(1)(b) of FOISA.
5. Mr K requested a review of this response on 13 February 2010. He stated that the room and extension number concerned could be verified by the two named persons.
6. NHS Greater Glasgow & Clyde responded to Mr K's request for review on 12 March 2010. It upheld the decision that it did not hold the information requested, and advised that the information would, in any event, be exempt from disclosure under section 38(1)(b) of FOISA.
7. Mr K remained dissatisfied with NHS Greater Glasgow & Clyde's response and, on 20 March 2010, applied for a decision from the Commissioner in terms of section 47(1) of FOISA. He provided reasons for his dissatisfaction with the responses he had received from NHS Greater Glasgow & Clyde in a separate letter, dated 27 March 2010.
8. The application was validated by establishing that Mr K had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner only after asking the authority to review its response to that request.

Investigation

9. On 16 April 2010, NHS Greater Glasgow & Clyde was notified in writing that an application had been received from Mr K and invited to provide comments, in terms of section 49(3)(a) of FOISA. NHS Greater Glasgow & Clyde was also asked:
 - a) to confirm whether it currently held copies of the phone records requested by Mr K;
 - b) to advise whether any other information about phone calls was routinely recorded by NHS Greater Glasgow & Clyde;
 - c) to advise whether the two named individuals had made any notes of calls in which they were involved during the period specified in Mr K's request



10. NHS Greater Glasgow & Clyde responded on 13 May 2010. In relation to point (a) above, it confirmed that the information in question was not held. In relation to point (b) above, it advised that NHS Greater Glasgow & Clyde did not have a policy on routinely recording information on phone calls made or received by its staff.
11. In relation to any notes of phone calls made by the two named individuals (point (c) above), NHS Greater Glasgow & Clyde advised that one of the named individuals was not one of its employees, and there was therefore no expectation that it would hold any information in relation to notes of calls made by this person. NHS Greater Glasgow & Clyde advised that it had no information about the type of case paperwork this individual might have been required to complete.
12. In relation to the other named individual, NHS Greater Glasgow & Clyde advised that it was possible that information about phone calls made during the period specified by Mr K may have been included in the medical records of the patients seen by that individual during that period. However, this had not yet been established.
13. NHS Greater Glasgow & Clyde agreed to check whether the relevant patient records contained any information about phone calls made during the time specified by Mr K. NHS Greater Glasgow & Clyde explained that while it had a record of all patients with scheduled appointments for the date in question, it was possible that other people had been seen after the last scheduled appointment (4 pm). Without an extensive check of all of its records, there was no way of knowing whether this was the case. It was not possible to seek advice on this point from the individual concerned as they were no longer employed by NHS Greater Glasgow & Clyde. Consequently, NHS Greater Glasgow & Clyde had only been able to identify two patients seen by that individual between 4 pm and 8 pm.
14. One of the identifiable patients was Mr K's wife. NHS Greater Glasgow & Clyde confirmed (7 June 2010) that she had already been provided with a copy of her medical records. Taking into account the background to this case, it was considered that if her records had contained any information about phone calls, this would already be available to Mr K. Accordingly, NHS Greater Glasgow & Clyde was not required to check these records for details of relevant phone calls.
15. NHS Greater Glasgow & Clyde advised (9 June 2010) that after examining the health records for the other identifiable patient, it could confirm that they contained no record of any telephone calls being made during the consultation on the date in question.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the information withheld and the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.



Information not held

17. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. Section 1(4) states that the information to be given by the authority is that held by it at the time the request is received (see full text in Appendix). However, if a public authority does not hold the information requested, it is not obliged by FOISA to obtain the information from a third party in order to fulfil the request.
18. Mr K had previously been given information from the archived records of NHS Greater Glasgow & Clyde's telephone service provider, in relation to an earlier request. However, although this may have created an expectation that he was entitled to such information under FOISA, the Commissioner finds that NHS Greater Glasgow & Clyde did not hold the telephone service provider's records, and therefore acted lawfully in refusing Mr K's request on the grounds that the information was held by the telephone service provider and not NHS Greater Glasgow & Clyde.
19. As the information from the telephone service provider's records is not held by NHS Greater Glasgow & Clyde, the Commissioner will not go on to consider whether the information would have been exempt from disclosure under section 38(1)(b) of FOISA, or whether, if it had been held by NHS Greater Glasgow & Clyde, it should have been provided to Mr K.
20. The Commissioner made enquiries to establish whether NHS Greater Glasgow & Clyde might hold other information about phone calls relevant to Mr K's request. In this connection, he accepts that NHS Greater Glasgow & Clyde could not be expected to hold such information in respect of the named individual who was not in its employment. NHS Greater Glasgow & Clyde confirmed that its staff were not required, by policy, to routinely record information about phone calls. Enquiries therefore focused on notes about the patient appointments known to have taken place during the period specified by Mr K in his request.
21. After investigation (outlined in the previous section of this decision notice), the Commissioner accepts that NHS Greater Glasgow & Clyde has taken all reasonable steps to establish whether it held any recorded information about relevant phone calls. No information has been found.
22. The Commissioner therefore finds that NHS Greater Glasgow & Clyde was correct to give Mr K notice, in terms of section 17(1) of FOISA, that it did not hold the information he had asked for.



DECISION

The Commissioner finds that Greater Glasgow and Clyde NHS Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr K.

Appeal

Should either Mr K or NHS Greater Glasgow & Clyde 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
18 June 2010



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.

...

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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