

Decision Notice



Decision 074/2012 Ms Denise Turnbull and Lanarkshire NHS Board

Agenda for Change

Reference No: 201102288

Decision Date: 23 April 2012

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Margaret Keyse

Acting Scottish Information
Commissioner

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Summary

Ms Turnbull requested from Lanarkshire Health Board (the Board) information relative to its "Agenda for Change" programme, with particular reference to a specific job evaluation exercise. The Board responded by providing some information, while stating that certain information was exempt from disclosure under section 38(1)(b) of FOISA. Following a review, during which further information was provided, Ms Turnbull remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Board had failed to deal with Ms Turnbull's request for information in accordance with Part 1 of FOISA, by failing to identify and locate all of the information it held and which fell within the scope of Ms Turnbull's request. However, she was satisfied that the Board had done this by the end of the investigation.

Given the information provided to Ms Turnbull during the investigation, and noting that Ms Turnbull accepted the redaction of personal data from that information, she did not require the Board to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 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.

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 5 April 2011, Ms Turnbull wrote to the Board requesting information contained in all relevant documents and material submitted or relating to a specific "Agenda for Change" Panel meeting (and which related to a specific job evaluation exercise), supplementary job description information, and certain related files and exchanges of information.



2. The Board responded on 2 May 2011, providing information to Ms Turnbull. It explained that certain personal data had been redacted in terms of section 38 of FOISA.
3. On 11 May 2011, Ms Turnbull wrote to the Board requesting a review of its decision. She identified certain information she believed should be held, but which had not been provided. She also believed more information had been redacted than should have been.
4. The Board notified Ms Turnbull of the outcome of its review on 9 June 2011. It was satisfied that all relevant information had been provided, giving further explanations of what it had provided, and that only appropriate personal data had been redacted (providing further explanation in relation to this also).
5. On 5 December 2011, Ms Turnbull wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Turnbull 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.

Investigation

7. On 10 January 2012, the Board was notified in writing that an application had been received from Ms Turnbull, and was asked to provide the Commissioner with any information withheld from her. The Board responded with the information requested, and the case was then allocated to an investigating officer.
8. The investigating officer contacted the Board on 31 January 2012, 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, the Board was asked to explain the steps it had taken to identify and locate the information Ms Turnbull had requested, and to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Board responded on 21 February 2012, indicating that, having carried out further searches, it transpired that it did hold further "consistency checking information" falling within the scope of Ms Turnbull's request. The Board provided this information to Ms Turnbull. The Board also provided submissions in support of its position that it did not hold any further information.
10. During the investigation, Ms Turnbull confirmed that she had received the additional information. She accepted the redactions of personal data, which will not, therefore, be considered further in this decision. Ms Turnbull believed that the Board should hold further information, however, and requested that the Commissioner make a decision on the matter.



11. While Ms Turnbull believed that the Board should hold certain information, the Commissioner can only consider whether the Board complied with FOISA in identifying, locating and providing her with such relevant information as it actually held.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Ms Turnbull and the Board and is satisfied that no matter of relevance has been overlooked.

Information held by the Board

13. 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), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable 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). 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.
14. In her application to the Commissioner, Ms Turnbull stated that she believed the Board had redacted information from the material disclosed to her in addition to personal data. The Commissioner, however, having reviewed the information in question, is satisfied that the redactions made consisted only of names, initials and identifier codes of individuals.
15. Ms Turnbull also indicated that she did not receive any "consistency checking information", which the Board had indicated was contained in one of the documents provided to her. She also believed the disclosed information failed to provide "an unbroken paper trail" in respect of the job evaluation exercise.
16. The Board provided explanations of the relevant processes. It advised that, during the investigation, it had carried out further searches of its records and retrieved certain relevant "consistency checking information". The Board accepted that this information should have been located at an earlier stage and should have been provided to Ms Turnbull, with an explanation of why this information was not contained in the document to which Ms Turnbull had been directed initially.
17. The Board advised that it did not hold any further information, in addition to that located and provided to Ms Turnbull during the course of the investigation. The Board explained (with details) that it had carried out specific searches and enquiries to confirm that no further relevant information was held. The Commissioner has considered these submissions and, in the circumstances, is satisfied that these were carried out in the appropriate places and generally were adequate in the circumstances.



18. Having considered all relevant submissions, therefore, the Commissioner accepts that the Board carried out appropriate and adequate searches for the information in the course of the investigation and is satisfied, on the balance of probabilities, it does not (and did not, at the time it received the request) hold any further information falling within the scope of Ms Turnbull's request. Having considered the Board's submissions and the information located, the Commissioner does not consider it reasonable in the circumstances to expect that any further information would be held.
19. However, the Commissioner also finds that the Board failed to comply with Part 1 (and in particular section 1(1)) of FOISA, by initially failing to identify, locate and provide all of the information it held and which fell within the scope of Ms Turnbull's request. However, in the circumstances, she does not require the Board to take any action.

DECISION

The Commissioner finds that Lanarkshire NHS Board (the Board) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Turnbull. In particular, she finds that the Board failed to identify, locate and provide all of the information it held and which fell within the scope of Ms Turnbull's request.

Given that she is satisfied that (during the investigation) the Board provided Ms Turnbull with all relevant information it held, the Commissioner does not require the Board to take any action.

Appeal

Should either Ms Turnbull or the Board 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
Acting Scottish Information Commissioner
23 April 2012



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.
...