

Decision Notice



Decision 123/2012 Mr K McFadyen and the Blue Suite Medical Practice

Number of warning letters issued

Reference No: 201200541
Decision Date: 20 July 2012

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

Mr McFadyen requested information from the Blue Suite Medical Practice (the Practice), including numbers of warning letters issued to patients over specified periods. He was informed that exact figures could not be provided. While finding some technical shortcomings in the Practice's responses to Mr McFadyen, the Commissioner accepted that the Practice was not obliged to comply with his request, as the cost of doing so would exceed the statutory limit of £600.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 16(4) and (6) (Refusal of request); 19 (Content of certain notices)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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 7 February 2012, Mr McFadyen wrote to the Practice requesting certain information, including:
The number of letters warning patients that they may be removed from the practice list issued by the practice over the last twelve months, and issued by the practice over the last 5 years.
2. The Practice responded on 29 February 2012. It stated that the number of warning letters issued to patients would be disproportionately difficult to produce, and it was therefore unable to provide him with these figures.
3. On 9 March 2012, Mr McFadyen wrote to the Practice requesting a review of its decision.



4. The Practice notified Mr McFadyen of the outcome of its review on 13 March 2012. While providing estimated figures, it stated that that it did not keep statistics on the numbers of warning letters and consequently was unable to provide exact figures.
5. On 19 March 2012, Mr McFadyen wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Practice's review (in respect of the request set out at paragraph 1 above) and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr McFadyen 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

7. The Practice was notified in writing that an application had been received from Mr McFadyen, and given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. The Practice provided submissions in support of its reliance on the excessive cost provisions in section 12(1) of FOISA.
8. The relevant submissions received from both the Practice and Mr McFadyen will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr McFadyen and the Practice and is satisfied that no matter of relevance has been overlooked.
10. Firstly, the Commissioner is satisfied that the Practice is a Scottish Public Authority in that it is a person providing primary medical services under a general medical services contract (within the meaning of the National Health Service (Scotland) Act 1978). Given the nature of information requested by Mr McFadyen, the Commissioner is also satisfied that the information relates to the provision of those services. Consequently, for the purposes of the information request under consideration in this decision, the Commissioner is satisfied that the Practice is a Scottish public authority, as defined in paragraph 33 of Schedule 1 to FOISA.
11. Within its submissions to the Commissioner, the Practice clarified that it was seeking to rely on section 12(1) of FOISA in refusing Mr McFadyen's request.



12. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 by regulation 5 of the Fees Regulations. The Commissioner has no power to require the release of information should she find that the cost of responding to a request for that information exceeds this amount.
13. The projected costs the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
14. The Practice explained that any letter it sent to a patient would be recorded in the patient's notes. Over the last five years, since its records had become computerised, this would mean the letter being scanned into the patient's computer record. Consequently, any warning letters falling within the scope of Mr McFadyen's request would be held in the relevant patients' electronic files.
15. The Practice went on to explain that the scanned letters were not recorded by means of any identifier codes which would make them searchable electronically. They were not susceptible to key word or phrase searches and there was no separate log recording such letters (which could be issued in a range of different circumstances). Therefore, an individual trawl of each patient's case record would be required.
16. The Practice advised that to provide the exact figures Mr McFadyen was seeking, it would be required to open each patient's file one by one and peruse the contents for any relevant warning letters. Depending on the amount of information in the record, this would take longer for some patients than for others. It estimated that, on average, each file would take five minutes to review. With approximately 7,600 patients on the Practice list, the work would take approximately 633 hours.
17. The Practice submitted that the work could be undertaken by a grade 2 receptionist at a rate of £7.98 per hour, resulting in an estimated cost of £5,051.34. It submitted that a search going back over one year would be just as onerous as one covering five years.
18. Having considered the estimates and supporting arguments provided by the Practice, the Commissioner is satisfied that it has provided a reasonable estimate of the cost of compliance with Mr McFadyen's request. Even taking only one minute to review each patient file, the Practice would still incur a cost in excess of £1,000. Consequently, the Commissioner accepts that the Practice was entitled to refuse to comply with the request by virtue of section 12(1) of FOISA.



Section 15 of FOISA – Duty to provide advice and assistance

19. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
20. Examples of such advice and assistance given in the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 include, in cases where section 12(1) applies, "consider[ing] what information could be provided below the cost limit, and suggest[ing] how the applicant may wish to narrow the scope of their request accordingly" (see paragraph 1.9).
21. The Practice advised that to provide the information for a single year would be just as onerous as providing it for a five year period, given the manner in which the information was held. The Commissioner accepts this as reasonable in the circumstances: in any event, given the margin by which the cost of compliance exceeds £600, the Commissioner considers it highly unlikely that any useful relevant information could be extracted from the patients' files without exceeding the cost limit. In the circumstances, therefore, assisting the applicant to narrow the scope of their request would not appear to have been a realistic option in this case.
22. The Commissioner notes that within its review response to Mr McFadyen, the Practice attempted to provide him with a broad estimate of the frequency with which letters of this kind were issued to patients. In doing this, the Commissioner is satisfied that the Practice fulfilled the requirements of section 15 of FOISA, so far as it was reasonable to expect it to do so in the circumstances.

Refusal notice

23. The Practice's response to Mr McFadyen's request simply indicated that it would be "disproportionately difficult" to provide him with the figures he had requested. Basically, however, its underlying reasons for refusing to comply with the request would appear to have been based on excessive cost.
24. Section 16(4) of FOISA states that where an authority is claiming section 12(1) of FOISA applies to a request for information, it must provide the applicant with a notice stating that it so claims.
25. In addition, section 19 of FOISA states that a refusal notice under section 16(4) must contain particulars:
 - a. of the procedure provided by the authority for dealing with complaints about its handling of requests for information; and
 - b. about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).



26. The Practice failed to comply with either of these requirements in responding to responses to Mr McFadyen's request. Given the outcome of this case, the Commissioner does not require the Practice to take any action in response to these failures, although she would encourage it to familiarise itself with the procedural requirements of FOISA when responding to information requests. While the Practice may not be required to deal with information requests routinely, there is relevant guidance on the Commissioner's website, to which it may be helpful to refer when a request is received¹.

DECISION

The Commissioner finds that the Blue Suite Medical Practice (the Practice) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McFadyen.

The Commissioner finds that section 12(1) of FOISA permitted the Practice to refuse to comply with Mr McFadyen's request.

However, in failing to comply with the requirements for the content of refusal notices set out in sections 16(4) and 19 of FOISA, the Practice failed to comply with Part 1 of FOISA. The Commissioner does not require the Practice to take any action in respect of these failures in response to Mr McFadyen's application.

Appeal

Should either Mr McFadyen or the Blue Suite Medical Practice 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
20 July 2012

¹ <http://www.itspublicknowledge.info/ScottishPublicAuthorities/RespondingtoaRequest/InformationRequestResponse.asp>



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

16 Refusal of request

...

- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.

...

- (6) Subsections (1), (4) and (5) are subject to section 19.



19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.